

REPORTER'S RECORD  
VOLUME 1 OF 1 VOLUME  
TRIAL COURT CAUSE NO. 2011-76724

HARRIS COUNTY, TEXAS,	*	IN THE DISTRICT COURT OF
<i>Plaintiff</i> , and THE STATE OF	*	
TEXAS, acting by and through	*	
The TEXAS COMMISSION ON	*	
ENVIRONMENTAL QUALITY, a	*	
<i>Necessary and indispensable</i>	*	
<i>Party</i>	*	
v.	*	HARRIS COUNTY, T E X A S
INTERNATIONAL PAPER COMPANY,	*	
MCGINNES INDUSTRIAL	*	
MAINTENANCE CORPORATION,	*	
WASTE MANAGEMENT, INC., AND	*	
WASTE MANAGEMENT OF TEXAS,	*	
INC., <i>Defendants</i> .	*	295TH JUDICIAL DISTRICT

REPORTER'S RECORD

DAILY COPY

OCTOBER 30, 2014

On the 30th day of October, 2014, the trial came on to be heard in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Caroline Baker, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computerized stenotype machine; Reporter's Record produced by computer-assisted transcription.

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**BY: MS. PAULA W. HINTON  
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OCTOBER 30, 2014

(Whereupon the following is a discussion  
outside the presence of the jury:)

THE COURT: We can go on the record.

We heard the defendants' motions for  
directed verdict. I have gone back and considered all  
the motions and am making the following rulings:

With respect to International Paper's  
Motion for Directed Verdict under the Spill Act, that  
motion is denied at this time without prejudice.  
However, I want to advise the parties that I am  
continuing to look at the fixture issue and that I have  
some questions about that, so I may well revisit that at  
the Charge Conference.

With respect to IP's Motion for Directed  
Verdict as to one facility, I have gone back and  
considered that. I have re-reviewed the *Slay* case; and  
considering all of the authority and the evidence in the  
case and the purpose behind those issues, I believe that  
I must grant that motion for directed verdict as to one  
facility, meaning that, for purposes of our record, that  
we're talking about one violation per day.

With regard to International Paper's Motion  
for Directed Verdict as to daily discharge, that motion

1 is denied.

2                   With regard to International Paper's Motion  
3 for Directed Verdict, and I guess it also may be  
4 Champion's because of the language having to do with  
5 cause, suffer, allow or permit, that motion is denied  
6 without prejudice. I have already stated I'm continuing  
7 to look at the issue with regard to fixture and  
8 ownership of the waste, for continued ownership of the  
9 waste.

10                   International Paper's Motion for Directed  
11 Verdict on attorney's fees is denied.

12                   Waste Management of Texas's Motion for  
13 Directed Verdict is denied without prejudice. I'll  
14 repeat what I said before, which is that I think this  
15 case has some unique aspects to it that may be addressed  
16 in another forum, but that's not for me to decide. And  
17 that with the language of the statute, while I  
18 understand the defendants' position about corporate law  
19 and the tension between those two, I believe the broad  
20 language of the statute requires me to deny that motion  
21 for directed verdict.

22                   The Motion for Directed Verdict of Waste  
23 Management of Texas as to the Spill Act is denied.  
24 However, we may need to have further discussion at the  
25 Charge Conference with regard to the issue of the

1 statutory exemption. I'm not indicating which way I  
2 would rule on that; we just may need to have further  
3 discussion about that.

4 Waste Management of Texas' Motion for  
5 Directed Verdict on Chapter 41 is denied.

6 MIMC's Motion for Directed Verdict is  
7 denied. However, I do think we may have to have further  
8 discussion at the Charge Conference with regard to the  
9 issue of -- if it's to be part of the Charge, and I'm  
10 not saying that it is, but I can imagine that we may  
11 have further discussion around the issue of ownership of  
12 the waste vis-a-vis MIMC.

13 The motions for directed verdict with  
14 regard to the three statutes, in other words, that they  
15 can't all be presented, is denied.

16 And I believe I previously ruled on the  
17 issue with regard to the Solid Waste Disposal Act. My  
18 ruling continues to be the same on that issue, so any  
19 Motion for Directed Verdict on the Solid Waste Disposal  
20 Act is denied.

21 I think we all are aware that there are  
22 potential challenges in how this Charge is going to be  
23 worded, and nothing in my rulings addresses for one  
24 party or the other what my opinion is on how we need to  
25 word things in the Charge. And I imagine we will have

1 lots of further discussion about those issues and  
2 instructions and definitions and things like that, so  
3 I'm not taking a position for either party on those  
4 issues at this time. I'm simply ruling on the motions  
5 before me.

6 MR. WOTRING: Thank you, Your Honor. Could  
7 we go off the record for a minute?

8 THE COURT: Yes.

9 MS. HINTON: We do have a few more that  
10 weren't -- we didn't get a ruling on.

11 THE COURT: We're off the record.

12 (Discussion off the record)

13 THE COURT: We're back on the record.

14 First, I would like to note on the record  
15 that all defendants joined in all defendants' motions  
16 for directed verdict, so my rulings on the motions for  
17 directed verdict are as to all defendants on the issues  
18 that are global. For instance, when I ruled on the  
19 issue with regard to IP's motion for directed verdict on  
20 the daily discharge issue, all parties joined in that  
21 motion, so I intended that ruling to apply to  
22 International Paper, Waste Management of Texas, and  
23 MIMC; and I've ruled similarly on other motions.

24 When I granted the motion for directed  
25 verdict as to one facility, that was intended to grant



1 all defendants' motions for directed verdict on that  
2 point. And, to be clear, what I was speaking about was  
3 one facility -- when I said one violation per day, I  
4 meant one violation per day under each of the statutes,  
5 to the extent that it can be established that there is a  
6 violation under each of the three statutes. It would  
7 not be three statutes times three violations per day.  
8 And I was specifically addressing this case as under the  
9 law, that in this case I do not believe that it  
10 qualifies as more than one facility, under the law.

11 On Waste Management of Texas' Motion for  
12 Directed Verdict as to the time frame that is prior to  
13 Section 7.101, I'm denying that motion for directed  
14 verdict at this time without prejudice. That is an  
15 issue that I'm allowing all parties to more closely  
16 scrutinize, and we may be talking about that more  
17 extensively at the informal Charge Conference on Monday.

18 MIMC's Motion for Directed Verdict on  
19 beneficial ownership is denied, but I think we all  
20 understand that there may be further discussion about  
21 MIMC's interest, however that is framed or phrased, and  
22 there was an issue that I specifically addressed with  
23 Harris County with regard to the Mr. Axe letter, where I  
24 did not allow the Mr. Axe letter in evidence, but  
25 allowed Harris County to reserve the right to raise some

1 of the factual pieces of information that are in the  
2 letter and potentially put those into evidence. And so  
3 in all fairness to all parties, I think we have further  
4 need to address that.

5           The motion for directed verdict that I  
6 denied with regard to the Spill Act is as to all  
7 parties, and it also was intended to cover the portion  
8 of the motion for directed verdict as to "harmful  
9 quantities."

10           And MIMC's Motion for Directed Verdict as  
11 to attorney's fees with the specific argument that  
12 Ms. Baker did not provide competent expert testimony is  
13 denied. And if memory serves, I believe all defendants  
14 joined in that motion for directed verdict, as well, so  
15 that ruling applies to all defendants.

16           Let's go off the record.

17           (Discussion off the record)

18           THE COURT: Let's start with -- why don't  
19 we start with Mr. Allen.

20           MR. STANFIELD: All righty. So I guess  
21 we'll start with Allen --

22           THE COURT: Allen 1?

23           MR. STANFIELD: Allen Volume 1. I don't  
24 know where their first objection is.

25           THE COURT: It's actually on Page 10, Lines

1 3 through 5.

2 MR. REASONER: Your Honor, may I be excused  
3 to talk to a witness?

4 THE COURT: Yes, sir.

5 (Mr. Reasoner exits courtroom)

6 THE COURT: Where he's asked a question  
7 "And what you say will bind Harris County, right?" And  
8 he answers, "Yes." They argue that that calls for a  
9 legal conclusion.

10 MR. STANFIELD: So we are on --

11 THE COURT: Volume 1, Page 10, Line 3  
12 through Line 5.

13 MR. STANFIELD: For some reason I don't  
14 have Page 10. But it's -- the question is "You  
15 understand what you say is going to bind Harris County,"  
16 and the answer is, "Yes"?

17 THE COURT: Yes, sir.

18 MR. STANFIELD: There is no objection  
19 there, Your Honor. I think that would be fine to put it  
20 in there, though, still, to note that he's giving  
21 answers on behalf of Harris County. I don't think that  
22 is a legal conclusion. I think it's just stating you  
23 understand you're here to talk for Harris County and to  
24 give their positions.

25 THE COURT: I don't really have a

1 problem --

2 MR. MUIR: It's the, "And what you say will  
3 bind Harris County, right," that's calling for a legal  
4 conclusion.

5 THE COURT: So what he's saying is, I don't  
6 understand why the question on Line 25, Page 9 through  
7 Page 10, Line 2, doesn't accomplish your purpose without  
8 getting into a further question that is a legal  
9 conclusion.

10 MR. STANFIELD: That's fine. Let's take it  
11 out. So 10/3 through 5.

12 THE COURT: Comes out. The next one is 40,  
13 Lines 2 through 11. This is their objection.

14 MR. STANFIELD: This is really more of a  
15 MIMC issue, me kind of springing my brothers in arms.

16 MS. HINTON: Yes, Your Honor. This is  
17 basically -- we're showing the deed, the Virgil McGinnes  
18 deed. The second one is that they also have the Virgil  
19 McGinnes deed --

20 THE COURT: Can I stop you for just a  
21 second? Their objection is it's cumulative. I will  
22 overrule that objection, but I want to go down to Page  
23 40, Lines 12 through 19, because Mr. Muir has an  
24 additional objection there of hearsay. So let's look at  
25 12 through 19.

1 MS. HINTON: And 12 through 19, Your Honor,  
2 are the Harris County appraisal documents, which are  
3 public records, where he's saying he sees that Virgil  
4 C. McGinnes, Trustee is still shown as the owner. I  
5 don't know why that's hearsay. It is a public record  
6 coming out of HCAD.

7 THE COURT: Were you intending to address  
8 that one, Mr. Muir; or were you going on to the Patel  
9 letter?

10 MR. MUIR: Both of them.

11 THE COURT: Why is the Harris County  
12 Appraisal District record hearsay?

13 MR. MUIR: I have not seen any certified  
14 public record that's been presented.

15 MS. HINTON: I believe we sent one over to  
16 your office when we put the group together. It did come  
17 out of the Harris County Appraisal District records.

18 Also, I believe this is on the pre-admit  
19 list, so my expert on the exhibit list is not present;  
20 but I'm pretty sure this is a pre-admit with no  
21 objection.

22 MR. MUIR: Which exhibit?

23 MS. HINTON: It's Exhibit No. 1437, is the  
24 new one that had all -- the previous one had two or  
25 three. This runs it through all.

1 THE COURT: Well, that one is an issue of  
2 I think it has clearly been addressed and I assume  
3 that's an issue that a certified copy is not a hard  
4 thing to get from the HCAD records. I don't think  
5 that's in dispute. I'll overrule that objection, but  
6 let's talk about the Patel letter, which is his next  
7 objection, Page 40, Line 20, through 41, Line 14.

8 MS. HINTON: I'm sorry, Your Honor?  
9 Page 40 --

10 THE COURT: 40, Line 20, through 41, Line  
11 14. Mr. Muir is arguing hearsay and that it asks for a  
12 legal conclusion.

13 MS. HINTON: Your Honor, this goes into  
14 what --

15 THE COURT: The memo from Patel. And  
16 specifically what he's talking about, as I understand  
17 it, is on Page 41. The question actually states, "And  
18 in that the conclusion is..." and it's a legal opinion.

19 MS. HINTON: Your Honor, I believe really  
20 this letter talks about the facts that they have found.  
21 However, to the extent the testimony or the letter says  
22 "And the legal conclusion is," I don't think they're  
23 asserting an attorney/client privilege on that  
24 information, Your Honor, at all. No assertion was ever  
25 made; and this was produced, that this is an

1 attorney/client privileged document.

2 THE COURT: We used part of that memo  
3 before, did we not, but not the whole thing?

4 MS. HINTON: We used the whole thing  
5 earlier in the testimony of Ms. Baker, who admitted on  
6 the stand she had seen this document and the conclusions  
7 raised in it.

8 MR. MUIR: It was for a limited purpose  
9 only, Your Honor.

10 MS. HINTON: I used this with Ms. Baker as  
11 Exhibit 7. It's dated 2009. I put it on the screen in  
12 front of the jury.

13 THE COURT: Right, but it's not in  
14 evidence. You just crossed her with it.

15 MS. HINTON: I crossed her with it, but she  
16 admitted she had seen it and had -- knew the legal  
17 conclusions -- factual conclusions contained therein.  
18 I believe she has properly identified that document as  
19 coming from Harris County and it is admissible. This is  
20 not on the pre-admit list, you are correct, Your Honor;  
21 but I do think this is -- this was produced without  
22 objection, no attorney/client privilege was asserted,  
23 and I'm entitled to use this, Your Honor, as to what the  
24 County knew. The facts stated therein are also  
25 relevant; but no attorney/client privilege has been

1 asserted as to this document, whatsoever.

2 MR. WOTRING: The document, I think, bears  
3 a U.S. EPA production number on it, so at some point it  
4 was produced to the EPA. Evidently, it was not  
5 introduced into evidence in this case. It was flashed  
6 on the screen and Ms. Baker was asked if she was aware  
7 of it or not aware of it. We think it gets into a lot  
8 of the EPA issues that have been excluded because it  
9 talks about the Harris County review of title up to that  
10 point in time. And it's unclear -- it's clear that  
11 whoever was doing that didn't have the benefit of the  
12 information about the beneficial ownership. And to the  
13 extent that letters or admissions from attorneys to the  
14 EPA are going into evidence, I've got a copy of Exhibit  
15 No. 144, which is a February 22nd, 2010 letter from Al  
16 Axe to Barbara Nann, the first sentence of which says --

17 MS. HINTON: That did not go to the EPA,  
18 Your Honor.

19 MR. WOTRING: -- "This letter is sent on  
20 behalf of McGinnes Industrial Maintenance Corporation,  
21 ('MIMC'), one of the Respondents under the  
22 above-referenced UAO." So if we're going to put stuff  
23 in, which we already have, that our attorneys sent to  
24 the EPA, then we ought to be able to put their  
25 information that they sent to the EPA. So that would be



1 our --

2 THE COURT: So Mr. Wotring's point is this  
3 is an October 28th, 2009 letter, which is outside the  
4 penalty period. It's clearly during the responses to  
5 the EPA time, and that if we're going to put this in,  
6 then they ought to be able to put in Mr. Axe's letter.

7 MS. HINTON: Actually, he didn't refer to  
8 Mr. Axe's letter. He referred to something else, I  
9 believe. You are referring to Axe?

10 MR. WOTRING: I am referring to  
11 Exhibit 144, which is a February 22nd letter from Al  
12 Axe.

13 THE COURT: What is the year?

14 MR. WOTRING: February 22nd of 2010. I  
15 have highlighted what I think is to be redacted and  
16 presented to the jury without raising the issues that  
17 have previously been excluded.

18 MS. HINTON: I'm sorry, Your Honor. I  
19 haven't seen those redactions. But with respect to this  
20 2009 letter, this also goes into the issue relating to  
21 penalties, what did the County know about the ownership  
22 of the property, the status of the property in terms of  
23 who they went after and whom they didn't go after in  
24 this case. The Court is well aware I don't think the  
25 legal standard for beneficial ownership has been met for

1 MIMC -- I know you are taking that under  
2 consideration -- nor do they have standing to assert the  
3 beneficial ownership issue. But I believe this 2009  
4 letter from the County, the facts of which Ms. Baker was  
5 aware of, is very relevant to what the attorneys and the  
6 County knew before they filed this lawsuit for civil  
7 penalty purposes. These are facts, and never has an  
8 attorney/client privilege assertion been raised with  
9 respect to this letter. It was produced to the EPA  
10 without objection and has never been attempted to be  
11 clawed back in this proceeding.

12 THE COURT: Let's assume that comes in.  
13 Why doesn't Mr. Wotring get to put in Mr. Axe's letter  
14 about what the County knew from MIMC at that point?

15 MS. HINTON: This is not the County. This  
16 doesn't go to the County, Your Honor. This goes to the  
17 EPA. This relates solely to the EPA investigation.  
18 This is not anything he did with the County and the  
19 County's knowledge. It's an EPA letter not going to the  
20 County before they filed their lawsuit.

21 THE COURT: Does the -- did the County have  
22 access to that letter that was sent to the EPA?

23 MS. HINTON: They had to serve a Freedom of  
24 Information Act request after this case was filed to get  
25 the EPA material.

1                   MR. WOTRING: I don't know the time period  
2 in which we got the letter, to be candid with the Court.

3                   THE COURT: Okay.

4                   MR. WOTRING: My point would be if we're  
5 going to be talking about information during the --  
6 outside the penalty --

7                   THE COURT: Let me ask a more pointed  
8 question: Did you have that letter before you filed the  
9 lawsuit? Didn't you-all do the Freedom of Information  
10 request prior to the lawsuit?

11                  MR. WOTRING: We did a Freedom of  
12 Information Act request prior to filing the lawsuit and  
13 got many thousands of pages of documents. I can't  
14 answer the Court's issue with respect to this particular  
15 document, and I would be concerned about doing so for  
16 the reasons I was concerned about Ms. Baker answering  
17 questions about what we reviewed before filing the  
18 lawsuit.

19                  But the larger point is if MIMC is taking  
20 the position, as they are, that they have no beneficial  
21 ownership interest in this, I'm looking at a letter on  
22 behalf of their attorney, spelling out their conclusion  
23 they had a beneficial ownership interest in this  
24 property. It is from their attorney saying, "I am  
25 MIMC's attorney," sending it to the EPA. And we can

1 redact the portions of it that raise the issues we've  
2 talked about, or not, as they want; but it should come  
3 in --

4 MS. HINTON: And let's say --

5 MR. WOTRING: And I would like to finish.  
6 And it should come into evidence, in all fairness, in  
7 response to their claim that they don't have a  
8 beneficial ownership. They can't -- they can't make  
9 that claim and exclude relevant evidence that has been  
10 presented to the EPA on that very issue. And it is  
11 their statement contradicting their position in this  
12 case.

13 MS. HINTON: Let me step back, Your Honor.  
14 First, we do need to know if they had this document  
15 before they filed suit; and I believe the evidence will  
16 show that they did not have this document before they  
17 filed suit, and had not reviewed it.

18 Secondly, this letter does not state that  
19 MIMC is a beneficial owner of this property. The status  
20 for the -- it said it is possible. It states,  
21 "Therefore, it is possible that MIMC is the beneficial  
22 owner of the VCM tract and, as such, can access the Site  
23 for purposes of compliance with the UA0 and any  
24 upcoming" -- and let me tell you the problem here if we  
25 open this door, Your Honor.

1                   The conclusion of the EPA was, "You're not  
2 a beneficial owner. We will not let you access this  
3 site, and we can only go on this site if all the  
4 McGinnes heirs," who are the proper owners of the  
5 property, "specifically sign access agreements." If  
6 they get this letter in, then I get to put before the  
7 jury the fact that the EPA determined we were not a  
8 beneficial owner in any way, we could not provide access  
9 to the site, and that the McGinnes heirs had to, in  
10 fact, sign those documents to allow access to occur,  
11 because that is what the conclusion of the attempt for  
12 MIMC to cooperate with the EPA, to get access to the  
13 site for the EPA, for the investigation, was "No, you  
14 can't. You cannot do that, MIMC."

15                   Then the EPA had to go to each of the  
16 McGinnes heirs to sign access agreements. If this comes  
17 in, that comes in.

18                   MR. WOTRING: That's not necessarily the  
19 case. Of course, the findings of fact of the EPA have  
20 not come into evidence. On counsel for this defendant  
21 and the other defendants' motion, all that has been  
22 excluded; and we worked that out through a stipulation,  
23 which we can do in this particular instance, as well.

24                   Now, to address a subsidiary point, what we  
25 knew before we filed this lawsuit is not relevant. They

1 have taken no discovery on that particular issue, and  
2 that issue has passed us by.

3           They asked Ms. Baker certain limited issues  
4 on that from the stand. So I think that's a little bit  
5 of a distraction from the pertinent argument in front of  
6 us, which is they want to introduce evidence about what  
7 we said to the EPA during the Superfund process. And  
8 they have done that, and we should be able to do the  
9 same, with the same limiting instructions and the  
10 Court's guidance on how to focus the issue, especially  
11 if they're taking a position in a letter to a government  
12 entity that is inconsistent with what we're saying here.

13           THE COURT: On Page 40, for a variety of  
14 different reasons, I believe I need to sustain the  
15 objection to the questions with regard to that letter,  
16 which is, I believe, Exhibit 7 in the deposition. I  
17 don't have a problem with the rest of the testimony, but  
18 the portion that relates to the letter and the  
19 conclusions in the letter, the objection is sustained.

20           MS. HINTON: So we will do an Offer of  
21 Proof, then, on Page 40, Lines 20 through Page 41, Line  
22 14, or where exactly?

23           THE COURT: It would start at Page 40, Line  
24 20 and go down to 41/14.

25           MS. HINTON: Thank you, Your Honor.

1 MR. WOTRING: Would the Court rather take  
2 up Exhibit 144 after we do the depo cuts?

3 THE COURT: Yes, sir.

4 MR. WOTRING: Thank you.

5 MS. HINTON: The next clip in here, they  
6 had a hearsay objection, Your Honor; and it refers to  
7 Exhibit 8, which is pre-admitted.

8 THE COURT: Yes. That objection is  
9 overruled. The objection to Page 41, Line 15 through  
10 42/2 is overruled.

11 The next issue starts on Page 48, and I  
12 have a question about this. Mr. Muir has several  
13 objections, including relevance, cumulative, the  
14 enforcement policy not being at issue and violating the  
15 ruling on the Superfund process, as well as outside the  
16 scope of what the witness was designated to testify  
17 about. But here is where I have the question about  
18 Mr. Allen, because I thought this one portion was  
19 already in of, "And was it your decision to seek  
20 penalties"; and he answered, "No, it was not."

21 I thought I ruled on that at some point and  
22 that part was in, but there were other portions that may  
23 not be.

24 MR. STANFIELD: Right. So in opening we  
25 had our slides, Your Honor, that we put in front of the

1 jury, and it was a different clip from Allen than this  
2 one. He was asked this question a couple of times; and,  
3 candidly, I think it probably just needs to be in here  
4 once. There may be other cleaner ones.

5 But to your point, you did allow us to show  
6 the jury kind of a modified question and answer where he  
7 was asked, "Was it your department who decided to bring  
8 this suit," and "You are no longer in control of this  
9 case or who is seeking the penalties," and we were  
10 allowed to put that question and answer in front of the  
11 jury in the opening slides. It was originally two  
12 questions and one answer, and we modified it to one  
13 question and one answer.

14 THE COURT: So part of the argument with  
15 regard to this is -- and I think we need to divide it  
16 into portions. The first is 48/11 through 13. The  
17 question is, "Do you remember when Harris County decided  
18 to seek penalties? What date?" And the answer is, "Not  
19 specifically, no."

20 And their argument, beyond the other  
21 arguments, is why is that relevant.

22 MR. STANFIELD: Well, it's relevant to show  
23 the jury that there really is no evidence in this case  
24 to support the daily releases. There is no volume of  
25 evidence. There was no investigation done to document



1 actual releases. And this plays into the overall theme  
2 of these questions, in part, which is you brought the  
3 lawsuit and then you basically, through paid experts,  
4 tried to gen up evidence later because there is no  
5 actual documented releases from the site, there is no  
6 data that was ever collected, either before, during  
7 or -- about that.

8 THE COURT: Just a second. So how do we  
9 divide that out into, one, the issue of you -- you don't  
10 have documented evidence of daily releases and, two, you  
11 brought a lawsuit improperly without doing any  
12 investigation or anything else and you did it not -- you  
13 did it for political reasons? I mean, that is one of  
14 their arguments of you are getting back into those  
15 things that the Court already has excluded.

16 MR. STANFIELD: Well, Your Honor, let me  
17 just be clear. The point I made at the end was not you  
18 brought it for political reasons; it is a point that I  
19 think that is brought up often in litigation, which has  
20 already been made to the jury here, which is these are  
21 paid experts who we believe have a bias and incentive to  
22 give certain testimony.

23 THE COURT: And that's fair.

24 MR. STANFIELD: And that's really the  
25 thrust of this, which is, frankly, what happens all the

1 time in litigation, which is that this is lawyer driven,  
2 paid expert driven. It is not driven by the Pollution  
3 Control Department who would have done, in our opinion,  
4 we think, an unbiased scientific examination of the  
5 evidence to document actual releases.

6 THE COURT: I think -- and then I'll let  
7 Mr. Wotring respond. I think it is okay, as I said at  
8 the beginning of the case, for you to put in front of  
9 the jury that Mr. Allen -- it was not Mr. Allen's  
10 decision.

11 MR. STANFIELD: Right.

12 THE COURT: Beyond that, I think we're  
13 getting into it was Vince Ryan, it was the attorneys, it  
14 was something else.

15 MR. WOTRING: I would like to respond to  
16 the repeated suggestions throughout the life of this  
17 case, up to and now past the point of directed verdict,  
18 that this case was brought for an improper purpose and  
19 there was not a valid basis for bringing the lawsuit.  
20 That has been repeated, not just by this counsel, by his  
21 predecessor, not just by current counsel for Waste  
22 Management of Texas, but the predecessor counsels for  
23 Waste Management of Texas, and the same for MIMC. It  
24 has been suggested over and over again.

25 It is just sadly ironic that the same

1 people who make those suggestions stood up at the very  
2 beginning of this trial and said, "Judge, if you let  
3 them put in one document, the EPA findings of fact, this  
4 case is over. We can't put our case on to the jury  
5 because it would just be too convincing and that one  
6 document kills us," in essence.

7                   And number two, "Oh, my gosh. Don't let  
8 them mention the Public Health Assessment because that  
9 document will inflame the jury. They won't even be able  
10 to listen to our evidence."

11                   So for them to suggest, knowing that we had  
12 the EPA findings of fact and the Public Health  
13 Assessment prior to filing the lawsuit, that somehow  
14 this was done for an improper purpose, I just think  
15 is -- is incorrect and it's an unreasonable argument.

16                   THE COURT: I agree with you on the  
17 improper purpose issue. I think that it is one thing to  
18 argue when you filed the lawsuit you did not have  
19 documented evidence of daily releases, which I think is  
20 appropriate for you-all to argue. I think it is another  
21 thing to argue that when you filed this lawsuit, you did  
22 it for improper purpose and you didn't have any valid  
23 basis whatsoever for even thinking about filing a  
24 lawsuit, because if you do that, I think if you take  
25 that too far, you are potentially opening the door for

1   them to get into the EPA information for a different  
2   reason for which I excluded it before. Because at that  
3   point, it would be offered to show that they had lots of  
4   information. Whether you think it's admissible or not  
5   is a different question, but they had lots of  
6   information to support their belief that these were --  
7   the river was being contaminated. Let's just put it  
8   that way.

9                   MR. STANFIELD: I'm not making a Rule 13  
10   argument, Your Honor.

11                  THE COURT: I know, but I think it is  
12   tricky. And I think with the way some of the deposition  
13   testimony is being presented, I'm -- I think some of  
14   that crosses over into that area. And I'm just  
15   cautioning you-all that if we go too far with it, I'm  
16   going to have to revisit their argument for a different  
17   reason, and I don't think anybody is wanting to do  
18   that --

19                  MR. STANFIELD: Let me suggest a revision  
20   to this.

21                  THE COURT: -- meaning to present to this  
22   jury an entirely new case. I don't think either party  
23   wants to do that.

24                  MR. STANFIELD: No. So how about this,  
25   Your Honor: What if we kept in 48, starting at Lines 20

1 through 22, which is "Okay. Was it your decision to  
2 seek penalties?

3 "Answer: No, it was not."

4 THE COURT: I think that is fine.

5 MR. STANFIELD: And then you can skip  
6 forward and say on 49, Line 2, just through 6, which  
7 would be "Okay. Well, the lawsuit was filed by Vince  
8 Ryan's office, right?

9 "Yes. I know that, yes.

10 "Using Connelly Baker & Wotring, right?

11 "Correct."

12 Then maybe we can just keep those, so that  
13 we can kind of put the dichotomy up to the jury that  
14 we're trying to do, which is -- and I know there is a  
15 disagreement on this -- that this is a lawyer driven  
16 case with paid experts, as opposed to a Pollution  
17 Control Department driven case; and, consequently,  
18 that's why you've got paid experts who we believe are  
19 submitting the evidence they are, that they have created  
20 for the case.

21 And I think that's an entirely valid  
22 argument that comes out in every products liability  
23 suit, which is these are paid experts who are being paid  
24 to offer the opinions they are being offered in order to  
25 benefit the plaintiff.

1                   THE COURT: I'm not saying that's an  
2 improper argument. What I'm saying is when you make  
3 those arguments, it can open the door to other evidence  
4 coming in. So I'm not saying there is anything improper  
5 about doing that, in general.

6                   I don't think by you saying, "It's an  
7 expert-driven lawsuit," that that opens the door. You  
8 can make your arguments about their experts and that's  
9 who they used for corporate reps and all of that. I  
10 don't think that opens the door.

11                  I think it's the lawyer driven, which is  
12 not just Connelly Baker, but also Vince Ryan's office,  
13 that gets into this "It's lawyer driven and that there  
14 was no basis," which gets back to their, "Well, that's  
15 because we weren't able to put in front of the jury that  
16 we had this whole document from the EPA." So I'm not  
17 saying that you can't do that in cases. You can do that  
18 in cases, but I think this is not a distinction without  
19 a difference. I think there is a difference between  
20 arguing the lawyers have an interest in the case, a  
21 financial interest in the case, and arguing it's lawyer  
22 driven, meaning that's why it was filed, which is what  
23 Mr. Wotring is reacting to at this point.

24                  MR. STANFIELD: I'm really trying to make  
25 the first point you made, not that filing the lawsuit,

1 per se, was lawyer driven, although I think that's  
2 probably the case --

3 THE COURT: I understand that's your  
4 position and has been from the beginning of this case;  
5 but with the way those questions are asked --

6 MR. MUIR: Those questions do exactly that.  
7 They go directly to the filing of the lawsuit.

8 THE COURT: Exactly that, because it's  
9 about the filing of the lawsuit as opposed to the  
10 argument you've made, which is completely fair game  
11 about they have got a contingency fee, they have got a  
12 financial interest in the case, people make that  
13 argument. I don't think that opens the door to the EPA.  
14 But the lawyer-driven argument could, and I'm not making  
15 a ruling on that. I'm just raising the issue for  
16 purposes of your record.

17 MR. STANFIELD: Then for now, Your Honor,  
18 let's just do 48, Lines 20 through 22 and strike the  
19 rest.

20 THE COURT: Okay.

21 MR. STANFIELD: I don't want to open the  
22 door to the UAO, Your Honor, or the PHA. So that will  
23 exclude 48, 11 through 13, 48, Line 23 going through 49,  
24 Line 10. That will take that out.

25 THE COURT: Okay.

1                   MR. MUIR: I'm sorry. Your Honor, so  
2 your -- here is one issue with this. He's asking and  
3 he's being presented as the corporate representative --  
4 he's asking the corporate representative, "Was it your  
5 decision" -- "Was it your" -- "Was it Harris County's  
6 decision to seek penalties," in essence. That's what  
7 the question says. It doesn't say "Bob Allen,  
8 individually," "Bob Allen as XYZ." This is a question  
9 to Harris County.

10                  THE COURT: Okay. Let's look at -- I hear  
11 you on that point. Let's look at the other part. Do  
12 you remember what page that is where he talks about it  
13 again?

14                  MR. STANFIELD: Tell you what: How about  
15 Volume 3, Your Honor, Page 59?

16                  THE COURT: He does, but let me look at  
17 that.

18                  MR. STANFIELD: Volume 3, Page 59, Lines 6  
19 through 11. The question is, "Let's talk about your  
20 department, briefly. As I understand it, the  
21 circumstances of this case, your department was not  
22 involved in the development or initiation of this  
23 lawsuit; is that correct?

24                  "ANSWER: Correct."

25                  I mean, that would accomplish the same



1 thing.

2 THE COURT: I'll allow that.

3 MR. STANFIELD: So I'll tell you what,  
4 we'll take out Page 48 from Volume 1, Lines 20 through  
5 22, as well, and we'll just --

6 THE COURT: Okay.

7 MR. STANFIELD: For that point, it will be  
8 just Page 59 from Volume 3, Lines 6 through 11.

9 MR. MUIR: So all of 48 should be out?

10 MR. STANFIELD: Yes. So I had already  
11 withdrawn Lines 11 through 13, and starting at 23  
12 through 49, Line 10.

13 Your Honor, that was just one of those  
14 examples, like I said, where we can trim some fat,  
15 probably, as I -- we do this. I apologize I hadn't done  
16 that before.

17 THE COURT: Then I had a question on 58 --  
18 58 and 59. Some of the testimony looked like it was the  
19 same thing.

20 MR. STANFIELD: You mean within this  
21 deposition?

22 THE COURT: Yes. It was -- and I'm looking  
23 kind of specifically -- right now, I'm just putting to  
24 the side for the moment Mr. Muir's objections about  
25 permitting is not in the case and this has already been

1 asked; but I'm just looking at 58 and 59 asking the same  
2 thing. So let me look at that.

3 I thought the portion on 58, starting on  
4 Line 17, you know, "Back in 1965 when this disposal  
5 activity occurred," and then he's asked again on Page  
6 59, Line 21, somewhat the same question.

7 MR. STANFIELD: Right. So this sets up  
8 Pages 60 through 63, the cuts there. The point of that  
9 being -- as you know, part of our theme, Your Honor, is  
10 for Champion and IP, that we worked very cooperatively  
11 with the government. Every time there was a question  
12 raised, we were part of the solution there, et cetera,  
13 at the time period, which is why, then, after the  
14 disposal operation ended, in part, we didn't believe  
15 there was a further problem for us to address. And  
16 that's a factual dispute.

17 And so this is to set that up to say "There  
18 were no permits required; but you see this letter, we  
19 went to Harris County." And then it goes on at 59, 60  
20 and 61, "But if you wanted to get permission, even  
21 though it wasn't required, here is who you would have  
22 gone to."

23 I mean, it's putting into context what we  
24 did at the time and why we did not believe there was an  
25 ongoing problem.

1 THE COURT: There is a couple of things.  
2 One, I do think he's asked the same question twice on 58  
3 and 59.

4 MR. STANFIELD: Well, I think he may be --

5 THE COURT: Because he says on 58, "Okay."

6 Line 17: "And back in 1965 when this  
7 disposal activity occurred in '65 and '66, were permits  
8 available from Harris County for this type of disposal  
9 activity?"

10 "ANSWER: Not my knowledge, no."

11 Then on 59, Line 21: "Okay. With respect  
12 to the June 11th letter of 1965, at that time, as you've  
13 said, permits were not available from Harris County in  
14 connection with this type of disposal activity, right?"

15 "ANSWER: Correct."

16 That's the same question twice.

17 MR. STANFIELD: I see. Yeah, you are  
18 right. So take out 59, Lines 21 through 25.

19 THE COURT: 21 through 25. Then we've got,  
20 beyond Mr. Muir's objections, he's arguing for optional  
21 completeness on 60, where if you are going to put in all  
22 that information about what they did, he wants to put  
23 in, as I understand, Page 60, Lines 1 through 10, right,  
24 Mr. Muir?

25 MR. MUIR: Without the objection.

1 THE COURT: Without the objection.

2 MR. STANFIELD: Well, that's not really an  
3 answer. The answer is, "There could have been." That's  
4 speculation, lack of foundation; and he never identifies  
5 what other entity there would be. In fact, unless you  
6 were going to seek a water discharge permit, there was  
7 no permitting you could get for a landfill.

8 MR. MUIR: Well, that is counsel  
9 testifying; but he's not going to testify. He does  
10 answer that, with regard to the Texas Department of  
11 Health, which was another regulating -- he says that as  
12 another regulating entity in the State of Texas.

13 THE COURT: Well, his point is, though, but  
14 if you are going to go ask Harris County for  
15 permission -- he's just talking about permits from  
16 Harris County.

17 MR. STANFIELD: That's right.

18 MR. MUIR: And they don't object to the  
19 responsiveness of the answer, Your Honor, which they  
20 needed to do if that was the problem.

21 THE COURT: I understand. I'm not talking  
22 about that question and answer. I'm saying the other  
23 questions were specific to whether permits were  
24 available from Harris County. I think you would be  
25 right if we were to ask "Were permits available at all,"

1 but he's specifically talking about Harris County.

2 And so their point is that's not optional  
3 completeness because if they were to offer something  
4 that said, "That's about the best thing you can get in  
5 connection with this disposal activity from anyone,"  
6 then you would get a question like they have on Page 60,  
7 Line 1, and the answer. But here, they're just saying  
8 that permits were not available from Harris County in  
9 connection with this type of disposal activity.

10 MR. MUIR: But under Rule 107, Your Honor,  
11 and the other part of the deposition -- of a document,  
12 including a deposition, it is admissible into evidence  
13 on the same subject; and they are still talking about  
14 the subject of what they did at that time and wasn't  
15 this -- they're making the case that "We did everything  
16 we could do at the time." They have said it over and  
17 over again. That's been their pitch. This indicates,  
18 well, maybe they didn't do everything they could.

19 THE COURT: Well, but look at their  
20 question on Page 60, Line 17. It says, "Since Harris  
21 County couldn't give the parties proposing to engage in  
22 the disposal activity a permit, this letter from Harris  
23 County approving that disposal activity was as good as  
24 they could do on a local level, right?"

25 And he answers. I think these questions

1 are confined to locally, so....

2 MR. MUIR: But the subject matter is, and  
3 what they have argued in this case so far is that "We  
4 have done everything that could have been done. There  
5 was no permits. So we did" -- that they have done  
6 everything they could have done.

7 THE COURT: Do you think they have been  
8 arguing that for the State? They have been arguing in  
9 Harris County there were no permits and, "We did  
10 everything we could do in Harris County," have they not?

11 MR. MUIR: I don't think it's been that  
12 limited, Your Honor. And the rule on the completion --  
13 it's not limited to it has to be the exact same question  
14 answered a different way. That's, I believe, too  
15 restrictive a reading of Rule 107 and Rule 106.

16 THE COURT: Well, I don't think it has to  
17 be the exact same question answered the same way; but I  
18 don't think that optional completeness means you get  
19 into another subject matter. And since all their other  
20 questions were limited to the local level, I don't think  
21 it's optional completeness to add something that doesn't  
22 relate to the local level, that goes to a question that  
23 wasn't limited to a local level that was not offered.  
24 So I would take out that repetitive part and the rest  
25 I'll allow. You are taking out 59, Lines 21 through 25.

1 MR. STANFIELD: That's correct, 59, Lines  
2 21 through 25 are out.

3 THE COURT: I think we're on 63/17.

4 MR. STANFIELD: All right. And this is  
5 just part of the --

6 THE COURT: And I have a question about  
7 that.

8 Mr. Muir, why do you think that question is  
9 misleading?

10 MR. MUIR: Well, Dr. Quebedeaux is the only  
11 one who has been reported to be at the site. They asked  
12 other questions: "Did Dr. Quebedeaux see the site?"

13 "Yes."

14 But this implies, you know, that all of  
15 Harris County was out there.

16 And since they asked the question, you  
17 know, about Dr. Quebedeaux repeatedly in other places,  
18 it certainly isn't needed here, as well.

19 THE COURT: Mr. Stanfield?

20 MR. STANFIELD: Well, Dr. Quebedeaux was  
21 head of his department and he provides, for lack of a  
22 better term, corporate knowledge to Harris County as the  
23 head of the relevant department at the time. So, yes,  
24 of course Harris County knew. And of course, we know  
25 the result of this was a letter on Harris County

1 letterhead about the site. So it did get formalized  
2 into a Harris County document about the site, which  
3 Dr. Quebedeaux visited on behalf of Harris County.

4 THE COURT: Objection overruled. 69/25  
5 through 75, and 77 through 8.

6 MR. STANFIELD: To be clear, she's  
7 referencing Page 70 through Line 5 and Page 70, Lines 7  
8 and 8.

9 THE COURT: Yes.

10 MR. STANFIELD: Your Honor, I think you can  
11 understand why I'm proffering it.

12 THE COURT: I do. And while I appreciate  
13 the objection, I think there is evidence on that issue.  
14 It's for the jury to consider one way or the other, so I  
15 do overrule that objection.

16 MR. STANFIELD: And 71 is just the  
17 follow-up, and Your Honor was very careful in cutting  
18 this to only include the unredacted portion from the  
19 1966 water board meeting -- testimony.

20 THE COURT: Okay. So --

21 MR. STANFIELD: Which is why I didn't go  
22 past Line 20 on Page 71, because that is not part of  
23 what is in evidence.

24 THE COURT: Okay. I guess the question to  
25 you, Mr. Muir, is why that is optional completeness when



1 he's talking about a different subject, starting on Line  
2 20?

3 MR. MUIR: Well, Your Honor, it really is a  
4 Rule 106, as opposed to a Rule 107.

5 THE COURT: Okay. I only mentioned that  
6 because you said optional completeness.

7 MR. MUIR: Yes, and I apologize. It is a  
8 remainder of a related writing or a reported statement,  
9 which includes a deposition.

10 MR. STANFIELD: My only concern about that,  
11 Your Honor, is that that specific portion of the  
12 testimony was redacted out.

13 MR. MUIR: And there has been testimony put  
14 in in this case that they believed this was nontoxic and  
15 inert, I believe was the phrasing. So since -- since  
16 they have put on evidence saying that they believed it  
17 was inert, they knew that it wasn't -- it wasn't  
18 necessarily considered inert at that time.

19 MR. STANFIELD: I want to be clear, that  
20 came out in Mr. Golemon's deposition that Harris County  
21 played, where he was asked to talk about the material  
22 and he goes "I would describe it as inert." And I think  
23 we talked about it before the case began, you know, you  
24 can't open your own door.

25 THE COURT: Um-hmm, with cross.

1                   MR. MUIR: I'm not sure that's the only  
2 time it's come up, Your Honor.

3                   MR. WOTRING: It's not. It's certainly  
4 been referenced throughout the case, that they had no  
5 reason to know that this was, you know, a harmful  
6 substance, in general.

7                   THE COURT: Haven't they really just put it  
8 in in terms of this was the testing? I don't know that  
9 they have -- I don't know that you even put in,  
10 ultimately, the test results, did you?

11                  MR. STANFIELD: No, Your Honor.

12                  THE COURT: Through the plaintiffs' case in  
13 chief?

14                  MR. STANFIELD: Right. We didn't get into  
15 the BOD testing and those sorts of things.

16                  THE COURT: I don't think you've said, "We  
17 had no reason to know this was toxic."

18                  MR. STANFIELD: No. I think the closest we  
19 got was to say, "We basically had no reason to know  
20 prior to the 5-mill study and the dioxin work EPA was  
21 doing, that there would be dioxin in the waste," and it  
22 was not listed as a hazardous substance until 1985.

23                  THE COURT: I don't remember any more  
24 specific testimony than that; but if you-all find a  
25 place where that's an issue, I'll reconsider it. At

1 this time I'll -- I will sustain the objection.

2 MR. MUIR: And, Your Honor, I would reoffer  
3 Page 60, Lines 1 through 10, under Rule 106, as opposed  
4 to 107.

5 THE COURT: Let's go back to 60, Lines 1  
6 through 10.

7 MR. MUIR: Yes, excluding the --

8 MR. STANFIELD: I reurge my objection.

9 THE COURT: The objection is sustained.  
10 Okay. Now we're on 75, Line 22 through  
11 76/3.

12 MR. STANFIELD: So this connects up -- just  
13 in terms of why we're offering it, this then connects up  
14 to 81, Lines 6 through 12, just to talk about there was  
15 no monitoring that was done, there was no sampling that  
16 was done from '65 to 2000.

17 THE COURT: Okay. So this issue comes up a  
18 couple of times with Mr. Muir in the sense that "It's  
19 one thing to say there was a fire and so we don't have  
20 those records, those archived records; but it's another  
21 thing to say there was no monitoring or investigation or  
22 anything," because they believe that if you start saying  
23 that, they get to get into the TMDL.

24 MR. MUIR: Yes, Your Honor.

25 THE COURT: To show that they actually did

1 participate in some of these things and that if you  
2 suggest that, they get to put that in to rebut that  
3 suggestion.

4 MR. MUIR: And in some of the places -- not  
5 this one, but in some of the offers with respect to the  
6 fire, it is -- it pointedly looks like they're saying  
7 there is a spoliation issue.

8 THE COURT: Are you talking about the part  
9 where they say there was a fire and then they say you  
10 didn't do anything to reconstruct those records?

11 MR. MUIR: To reconstruct, even though  
12 they're very important, et cetera, et cetera.

13 MR. STANFIELD: Yeah, Volume 3, that is  
14 particularly moving testimony; and I thought we might  
15 get there. But we will get there -- I think I only need  
16 the fire once.

17 THE COURT: I think you only need the fire  
18 once. And I don't have a problem with the fact that the  
19 records -- any records during that time period don't  
20 exist; but I think to the extent there is the suggestion  
21 of you didn't do anything afterwards to reconstruct  
22 these records, that makes it look more like you're  
23 saying that Harris County either was negligent or did  
24 something nefarious; and then, number two, I do think to  
25 the extent -- and we can talk about it when we get to

1 that particular point -- that we're talking about  
2 monitoring or things like that, that could lead to the  
3 TMDL issue. But we're not there yet.

4 So on 75/22 through 76/3, I don't think  
5 that, in and of itself, opens the door for the TMDL. So  
6 I don't have a problem with that particular offer, but I  
7 know we get to it later.

8 MR. STANFIELD: 81, Lines 6 through 12.

9 THE COURT: Wait a minute. We skipped over  
10 78, Lines 13 through 18.

11 MR. MUIR: I think that may have been one  
12 of the ones that was removed.

13 THE COURT: That's one of the ones that  
14 Mr. Muir is arguing that -- where he answers that there  
15 is no direct monitoring, that he should be able to get  
16 into the TMDL.

17 MR. STANFIELD: Your Honor, I have  
18 withdrawn that.

19 My next offer is on 81, Lines 6 through 12.

20 THE COURT: Got it. Okay. He's arguing --

21 MR. STANFIELD: That it's the same thing.

22 THE COURT: -- that it's the same thing and  
23 that that's going to allow him to get into the TMDL.

24 MR. STANFIELD: Mr. Allen, on behalf of  
25 Harris County, was asked these questions and gave these

1 answers.

2 THE COURT: He did, but...

3 MR. MUIR: But he was asked questions more  
4 than once, and he went through the whole TMDL and then  
5 they followed back up with this. It's all part of the  
6 same thing.

7 MR. STANFIELD: Maybe there is a  
8 counter-designation that Harris County would like to  
9 offer on that and then we can discuss what that would  
10 be.

11 THE COURT: Well, whether that's optional  
12 completeness or whether -- not that that's an offer.  
13 The question is, does this open the door to that?

14 MR. STANFIELD: I don't know about that  
15 without seeing what the specific testimony would be.

16 THE COURT: Well, one of the things they  
17 offered was 76/4 through 76/19.

18 MR. MUIR: There are two other offers, one  
19 is in Volume 2, Page 168, Line 20 through 169, Line 18,  
20 and Volume 3, beginning on Page 47, Line 21 and then it  
21 runs through 49/12, with some portions taken out.

22 THE COURT: Let's just start with 76/4  
23 through 19. Whether it comes in, again, as optional  
24 completeness or it's an offer, their position is that  
25 that shows that they started participating in those

1 meetings back in 2001, and that there was lots of  
2 information available about dioxin and fish and other  
3 things.

4 MR. STANFIELD: So that part I would not  
5 agree to come in, Lines 11 through 16. I think,  
6 frankly -- I don't think it's optional completeness. I  
7 think it's a counter-designation for them to cut and  
8 play. But I do think 76, Lines 4 through 10 and 76,  
9 Lines 17 through 19 would be fine; but I don't think  
10 they get lines 11 through 16. I don't think we've  
11 opened the door to fish tissue.

12 THE COURT: What about Lines 14 through 16?

13 MR. STANFIELD: Well, if you could cut --  
14 if you could do the cut to start with --

15 THE COURT: "So those meetings" --

16 MR. STANFIELD: "So those meetings were  
17 part of that process to determine what are the levels of  
18 dioxin in the sediment and where is it coming from.

19 "QUESTION: Are you talking about meetings  
20 after 2008, when the EPA got involved?

21 "ANSWER: No. These meetings started  
22 around 2001."

23 Then I would have an optional completeness  
24 from Lines 20 through 25 on Page 76, if we're going to  
25 talk about those meetings.

1                   THE COURT:   Okay.   What is your next part,  
2 Mr. Muir, in Volume 2?   It was page --

3                   MR. MUIR:   Your Honor, actually, we had  
4 kind of split these up.

5                   THE COURT:   Sure.

6                   MR. MUIR:   Lauren Hudson from the County  
7 Attorney's office was dealing with that.

8                   THE COURT:   Yes.

9                   MR. MUIR:   So I kind of stepped on some of  
10 her stuff already.   I would like to give her an  
11 opportunity.

12                  THE COURT:   Yes, with regard to the TMDL.

13                  MR. MUIR:   She's got that part.

14                  MR. STANFIELD:   Which page are we headed  
15 to?

16                  THE COURT:   We're in Volume 2.

17                  MR. STANFIELD:   Page 168?

18                  MS. HUDSON:   The TMDL in Volume 2 is 168/20  
19 through 169/18.

20                  MR. STANFIELD:   Okay.   We would object to  
21 that as getting into public health and other areas that  
22 are not directed specifically to -- in a clean way like  
23 Page 76, Volume 1 is -- to rebutting our question about  
24 whether or not you did something specific at this site.  
25 This gets into other issues because it's asking a



1 specific question about a phrase in the pleading in this  
2 case.

3 MR. MUIR: We could cut that "Did Harris  
4 County do anything to -- to try find the source of  
5 dioxin?"

6 THE COURT: "Did Harris County do anything  
7 to try to find the source of dioxin?"

8 MR. STANFIELD: Well, that is misleading  
9 because there is no single source of dioxin that's the  
10 issue of the TMDL. I mean, that is a dioxin-loading  
11 survey that I believe we've already established covers  
12 different congeners.

13 THE COURT: I do understand. I think if  
14 you're going to argue about not taking any steps to  
15 sample anything from the site, we're getting into the  
16 TMDL. And the question is, do you want to do that?

17 MR. STANFIELD: Your Honor, I think that's  
18 fine, but on Page 76 of Volume 1, it's just a very clean  
19 question and answer, without talking about health  
20 effects, the indicating there is a single source of  
21 dioxin, as we've talked about, which is on Line 4: "So  
22 what has Harris County done to monitor this site since  
23 you've been there in 1978?"

24 "ANSWER: Harris County participates in  
25 what is called the TMDL program. It's part of HGHC. So

1 we participate" -- then he goes on from there. That is  
2 a very clean question and answer that doesn't run afoul  
3 of any other issues, if we take out the part about fish  
4 tissue and things like that.

5 THE COURT: Okay. So I think, Mr. Muir,  
6 what Mr. Stanfield is proposing is actually just to take  
7 out on 76, Lines 12 and 13, "and the fish tissue."

8 MR. STANFIELD: Right.

9 THE COURT: So it would read, "So it was  
10 our participation in these meetings after the dioxin was  
11 found in the sediments to try to figure out where this  
12 dioxin is coming from. So those meetings were part of  
13 that process to determine what are the levels of dioxin  
14 in the sediment and where is it coming from."

15 So that's the only part of that answer on  
16 76 that he is proposing to be taken out.

17 MR. MUIR: I thought we were on --

18 THE COURT: Well, we're starting with 76  
19 and then we're moving on to 168.

20 MR. MUIR: Okay.

21 THE COURT: So that entire answer would  
22 come in, except the part that reads "and the fish  
23 tissue."

24 MR. MUIR: Okay.

25 THE COURT: And their point is it's not

1 optional completeness because 81 is talking about up  
2 until 2000, and 76 is talking about 2001 on.

3 MR. MUIR: Well, the question that this  
4 came up with is here, again, on Page 81 where he says,  
5 "Harris County is taking those steps to monitor from '65  
6 to into the 2000s."

7 THE COURT: Oh, "into the 2000s." Okay.  
8 So if this were to come in as optional completeness,  
9 then they're arguing they get 76/20 through --

10 MR. STANFIELD: 25.

11 THE COURT: -- 25.

12 MR. MUIR: Well --

13 THE COURT: So then the question becomes  
14 for you, Mr. Stanfield -- let's assume that comes in.  
15 Then on Page 168, why isn't it fair for Mr. Muir to have  
16 "Did Harris County do anything to find the source of the  
17 dioxin," and then the answer is really about the TMDL  
18 program being established in 2001.

19 MR. MUIR: Right.

20 MR. STANFIELD: So, assuming that the  
21 loaded parts of the question come out, as I would call  
22 them --

23 THE COURT: Right. The answer is just that  
24 the TMDL program was established in 2001.

25 MR. STANFIELD: That's probably acceptable.

1 I'm just trying to keep -- I think you know where I'm  
2 going, to keep out the part of the pleading in the case  
3 which does say something about searching in vain, blah,  
4 blah.

5 THE COURT: Yes.

6 MR. STANFIELD: I don't mean that it's not  
7 artfully worded, but --

8 MR. MUIR: And we don't have a -- we're  
9 fine with it reading "Did Harris County do anything to  
10 try to find the source of the -- of the dioxin."

11 THE COURT: Okay. So that would be 168,  
12 Line 20 through 169 --

13 MR. MUIR: 18, is what we offered.

14 THE COURT: Okay. So they're wanting to go  
15 down to 18. And --

16 MR. MUIR: Which is just a continuation of  
17 his answer, really, except for 16 through 18.

18 MR. STANFIELD: No, I would object to that  
19 part because it talks about -- I mean, there is no  
20 quantification in here and this could give the  
21 impression, again, that there are elevated levels of  
22 dioxin and you have an impaired river related to this  
23 site; and that's not -- that's not part of the evidence  
24 in the case.

25 So I think it would need to start off at

1 169/5, bearing in mind that the clip on 168, Lines 20  
2 through 21 and 23 through 25 are altered to take out --  
3 "to search in vain" and take out "so that they could  
4 protect the citizens from this public health threat."  
5 That has to come out, as well.

6 THE COURT: What if they have 169, Line 6  
7 through 169, Line 11 that ends with "dioxin," and then  
8 picks back up at 16 and goes through 18?

9 MR. STANFIELD: Well, no, because then you  
10 have elevated levels of dioxin, and there is no evidence  
11 of what that means, what is an elevated level versus  
12 what is a non-elevated level. I think that goes into  
13 the MCL issue as to what level do you have to have and  
14 how do you quantify the source for that.

15 MR. MUIR: It's a -- I hate to keep -- it's  
16 a factual statement of how it starts and it is not  
17 disputed. And I think -- well, Mr. Zoch talks  
18 extensively about the TMDL, as well.

19 MR. STANFIELD: He hasn't talked about it  
20 yet in front of the jury.

21 THE COURT: I think their point is it's  
22 okay to talk about where it was coming from. So what  
23 you are saying is it should end at 169, Line 9, with the  
24 word "counsel" and then pick back up at 16 through 18?

25 MR. STANFIELD: Correct.

1                   MR. MUIR: We disagree, Your Honor. We  
2 think your cut, taking out the portion where it starts  
3 "So you have an impaired waterway," is the proper place  
4 to stop that.

5                   THE COURT: Yeah, but if we're talking  
6 about monitoring the site, their point is that makes it  
7 look like it was initiated as a result of this site,  
8 which is not accurate. It was initiated along the  
9 river.

10                  MR. STANFIELD: Your Honor, I withdraw 81,  
11 Lines 6 through 12.

12                  MR. SCHRADER: I'll take credit for that,  
13 Judge.

14                  MR. STANFIELD: I'll just withdraw it and  
15 withdraw this whole issue.

16                  THE COURT: All right. So now we're on  
17 82/21 through 83/3 and then on down to 84. Okay. I  
18 don't have a problem with -- I understand they're  
19 arguing it's cumulative. I think it's okay for you to  
20 ask Mr. Allen that. But let's talk about Exhibit 24,  
21 because they object to that because it was not  
22 pre-admitted, and that's on Page 87.

23                  MR. STANFIELD: Well -- and just as a point  
24 of clarification, my -- procedurally, my recommendation  
25 is to either move for the admission of these documents

1 either immediately before or immediately after Mr. Allen  
2 testifies.

3 THE COURT: Okay.

4 MR. STANFIELD: And if I need to do that  
5 now, then I move for the admission of Exhibit 24 into  
6 evidence.

7 THE COURT: And the objection is, other  
8 than the hearsay objection you made? Is that your  
9 objection?

10 MR. WOTRING: That is the objection. This  
11 is one of the dredge -- well, one of the dredge  
12 documents. I don't want to have a fight about this  
13 document, when I suspect it might be in evidence under  
14 another number somewhere else. That might be the thing  
15 to check first.

16 THE COURT: I thought the dredging  
17 documents came in, did they not?

18 MR. WOTRING: This is not on the  
19 pre-admitted list. It is not on the pre-admitted list.

20 MR. GIUGLIANO: But I thought that was in  
21 maybe elsewhere.

22 MR. STANFIELD: Maybe a different number?

23 MR. GIUGLIANO: Yes. We'll double check  
24 that.

25 THE COURT: Let's go off the record for a

1 second.

2 (Discussion off the record)

3 THE COURT: On this point -- back on the  
4 record. While I understand and we've talked about this  
5 before, the argument by Harris County that "You can't  
6 say Harris County did something wrong and so, therefore,  
7 we're absolved;" but I likewise think it is permissible  
8 for the defendants to say "What we were doing was  
9 reasonable because that's what other people were doing  
10 that was reasonable."

11 And so I don't think I can keep out Page  
12 90, 4 through 7. I don't think that, in and of itself,  
13 that cut, is saying that Harris County did something  
14 wrong. It's, again, a fact that's already been  
15 discussed, and so I think that comes in.

16 Let's go to 90/23. That is -- Mr. Muir  
17 objects as hearsay and calls for a legal conclusion. I  
18 guess my question to you, Mr. Muir, is, isn't he just  
19 reading it? I mean, I understand if he's interpreting  
20 it; but the way I'm reading this, it looks like he's  
21 just reading from the document, because he asks him "Do  
22 you see that," on Line 21 of Page 91.

23 MR. MUIR: It doesn't appear to me that  
24 he's reading from the document, Your Honor. This is a  
25 letter from X regarding Y about Z to allow dredging.



1                   THE COURT: Let me start on 91, Line 15.  
2 He says -- this is the question: "Okay. And even in  
3 Paragraph 8 of that letter it says: 'It contaminated,  
4 spoiled,'" and then it goes on. And then at the end, on  
5 Line 20 the sentence ends and on Line 21, he says: "Do  
6 you see that?" And the answer is "Yes."

7                   MR. MUIR: I'm sorry. I was looking at a  
8 different portion. That appears he was reading.

9                   THE COURT: So you are now looking on Page  
10 92. Let me look at this.

11                  MR. MUIR: Okay.

12                  THE COURT: 92, line -- well, starting at  
13 91, Line 24, he's looking at the next exhibit, which I  
14 believe is 67; and it's from the Texas Parks & Wildlife,  
15 dated March 8th, 1991. And the question on Line 3,  
16 "And, it, too, refers to the subject Public Notice Dated  
17 January 31st, 1991; right?

18                  "ANSWER: Yes.

19                  "QUESTION: Okay. And it contains comments  
20 about the proposed dredging on the site, around the  
21 site, right?

22                  "ANSWER: Yes."

23                  Question on Line 10: "And if you'll look  
24 at Exhibit 27 in your book, the Port of Houston also  
25 comments on March 1st, 1991, regarding the same dredging

1 permit. Do you see that?

2 "ANSWER: Yes.

3 Question on Line 15: "And, in fact, that  
4 shows that dredging -- the second page of that document  
5 on Port of Houston's commentary on the dredging shows  
6 the proposed dredging all around the site in question  
7 that we're all concerned about, right?

8 "ANSWER: Yes."

9 And then the question on 21: "Okay. In  
10 fact, the TCEQ says in its letter, Exhibit 24, that the  
11 area in question or portions thereof actually belong to  
12 the State of Texas or to the Port Authority. Do you see  
13 that?"

14 And the answer on Line 3 of Page 93 is:  
15 "That's in the Port letter?

16 ANSWER -- QUESTION: "Yes, Paragraph 1?

17 "ANSWER: Yes."

18 Now, I understand if you were objecting to  
19 lines 6 through 11, where that is him interpreting it,  
20 and he answers on Line 10, "With this letter they  
21 believe that they own the area on the map that is  
22 underwater," I think that is interpreting the letter,  
23 but they didn't offer that. They only went to 93/5.

24 MR. STANFIELD: Right.

25 THE COURT: So I don't think he's

1 concluding anything. I think he's just reading from the  
2 letters. But you had another objection?

3 MR. MUIR: Yeah. On 92/15, I believe  
4 through 20, it says, "It shows dredging -- dredging all  
5 the" -- on the second page -- that it's -- it appears  
6 here that he's saying that there is actual dredging and  
7 that it wasn't talking about actual dredging, it was  
8 talking about permits to dredge, I believe.

9 THE COURT: But he references proposed  
10 dredging on Line 17. I don't think I can keep that out  
11 because he's just reading a letter.

12 MR. STANFIELD: Your Honor, on Exhibit 24  
13 we have confirmed that it has not been pre-admitted  
14 inadvertently, and so we would move for its admission.  
15 There is no -- there is no reasonable basis to keep that  
16 particular dredging document out, when all the other  
17 dredging documents are coming in. It's an ancient  
18 document, and Dr. Pardue, I believe, was crossed on it  
19 by Mr. Giugliano.

20 MR. WOTRING: On a document that was not in  
21 evidence?

22 MR. STANFIELD: Dock his pay, not mine.

23 MR. GIUGLIANO: It was cross.

24 THE COURT: I think the real issue, in all  
25 seriousness, is going to be that Mr. Zoch is going to

1 reference it in his testimony.

2 MR. WOTRING: Then I don't think we'll have  
3 an objection to that coming into evidence. I would like  
4 to use Exhibit No. 658 with Mr. Zoch, just the pits. I  
5 don't need the rest of it because that's the basis of  
6 my -- my deposition of him was using A, B and C from  
7 Exhibit 658.

8 THE COURT: You may do that.

9 MR. STANFIELD: You showed it to Dukert  
10 when that was played, and I didn't have an objection to  
11 that.

12 THE COURT: I think that's fine.

13 MR. STANFIELD: So I move for admission of  
14 Exhibit 24 into evidence.

15 THE COURT: I think with the understanding  
16 that Mr. Zoch is going to be testifying about it, that  
17 you-all did not have an objection.

18 MR. WOTRING: We do not.

19 THE COURT: Exhibit 24 is admitted.  
20 Defendants' Exhibit 24 is admitted.

21 MR. STANFIELD: Good point, yes.

22 THE COURT: So we are back at 94, 4 through  
23 14.

24 MR. MUIR: And I believe part of what I had  
25 objections to, they have now withdrawn in this.

1                   THE COURT: Yes. Can you confirm that,  
2 because I had some questions about that, as well,  
3 because there was an objection.

4                   Can you confirm what part of the offer from  
5 94 through 97 -- 94/4 through 97/11 you've taken out,  
6 because Mr. Muir thinks you've taken something out.

7                   MR. STANFIELD: So I've got 90 -- here is  
8 all I have, is 94, 4 through 14; 94, 17 through 20.  
9 Then I've taken a bunch of stuff out. Then I start  
10 again on 95, 22 through 25, and 96, 1 through 5. Well,  
11 I have got all of Page 96, except for the objections.

12                  THE COURT: Okay.

13                  MR. STANFIELD: I've got all of 97, except  
14 for the objections. So I guess what I've taken out is  
15 94/21 through 95, Line 21.

16                  THE COURT: Okay.

17                  MR. MUIR: And so then starting on Page 96,  
18 Line 2, despite the comments -- the question is  
19 argumentative.

20                  THE COURT: Well, I think 96/2 through 9  
21 ought to come out because you asked it more  
22 appropriately at 11.

23                  MR. STANFIELD: Let's take it out. 96,  
24 Lines 2 through 9 are coming out.

25                  THE COURT: Again, he's just referencing

1 the document.

2 MR. MUIR: Right.

3 THE COURT: So I think that's okay, but I  
4 think 2 through 9 should come out because he didn't have  
5 it in front of him.

6 And do you have another objection,  
7 Mr. Muir?

8 MR. MUIR: Well, his comments about despite  
9 the comments of TCEQ, Texas Parks, et cetera, the permit  
10 was issued anyway, I think is argumentative.

11 MR. STANFIELD: I think that would be a  
12 permissible question if the witness were on the stand.

13 THE COURT: I think it would. All right.  
14 So the objection is overruled. Then we get to 99/25,  
15 and this involves Exhibit 70. And Mr. Muir has made a  
16 double hearsay objection.

17 MR. STANFIELD: I think all that we're  
18 talking about here is actually the cover letter from Ken  
19 Bentsen, not the letter from the constituent. We're not  
20 offering the letter from the constituent as part of  
21 Exhibit 70, but we are offering the letter from Ken  
22 Bentsen, asking the Army Corps of Engineers to consider  
23 stopping any dredging in the area. And I would offer in  
24 that letter, just from the congressman, without  
25 attachments, into evidence.

1 THE COURT: All right.

2 MR. MUIR: And it's offered for the  
3 relevance of what?

4 MR. STANFIELD: To show that even a  
5 congressman couldn't stop this dredging, and so  
6 certainly my clients couldn't. Don't look so amused.

7 MR. WOTRING: I was thinking of something  
8 else, counsel. I'm sure it was not your remarks.

9 MR. STANFIELD: I mean, that is part of the  
10 point, Your Honor. You've got a congressman, you've got  
11 the Port of Houston Authority --

12 THE COURT: I think you get to make your  
13 point. I can't say it's not relevant, if that's the  
14 objection. I can't say it's not relevant.

15 MR. STANFIELD: I take exception to my  
16 co-counsel also laughing at my point.

17 MR. MUIR: There are a couple of these --

18 MR. BENEDICT: I'm laughing silently.

19 MR. STANFIELD: It all shows up the same on  
20 the written record.

21 THE COURT: One of the things that we get  
22 to, I think, when we get to the 101/22 through the  
23 102/4 -- wait a minute.

24 MR. STANFIELD: I am offering that.

25 THE COURT: But you are not offering 102, 5

1 through 9? You're ending at 4?

2 MR. STANFIELD: I'm definitely not offering  
3 the question starting at Line 5.

4 THE COURT: Okay. So you're just offering  
5 101/22 through 102/4?

6 MR. STANFIELD: Correct.

7 MR. MUIR: Other than the fact that it's  
8 now the third or fourth witness for Harris County that  
9 they have asked these questions to.

10 THE COURT: Well, this is one of those ones  
11 that I should address because of the argument made  
12 earlier that I think when we're talking about Harris  
13 County's position, I don't think it's necessarily  
14 relevant to say four Harris County corporate reps said  
15 the same thing. So I think you have to pick who you  
16 want to address those.

17 MR. STANFIELD: Allen.

18 THE COURT: If it's Mr. Allen, then fine.  
19 But that means Dr. Bedient or Dr. Pardue don't address  
20 it in their corporate rep depo offers.

21 MR. STANFIELD: That's fine. I would pick  
22 Bob Allen to give this testimony.

23 THE COURT: All right. So that is 101/22  
24 through 102/4.

25 MR. STANFIELD: Yes, Your Honor.



1 THE COURT: And next we get to 103/21  
2 through 104/18. And Mr. Muir has an objection as to  
3 hearsay on Exhibits 71 and 72, but he also believes that  
4 there is something there that violates prior rules  
5 regarding dioxin. And I had a question about that  
6 because I'm not sure what in there -- in that letter you  
7 think violates the previous rulings, Mr. Muir, because  
8 it's just talking about the permitting for dredging. So  
9 I had a question mark from my notes on that.

10 MR. MUIR: I don't show that it's  
11 pre-admitted.

12 MR. WOTRING: Yeah, I don't have that being  
13 down as pre-admitted.

14                   Here. We'll withdraw -- we'll withdraw any  
15 objection to the introduction of Exhibit 72.

16 THE COURT: Let's go off the record.

17 (Discussion off the record)

18 THE COURT: We're on the record now.

19 MR. STANFIELD: Your Honor, I withdraw, on  
20 behalf of all defendants, Page 104, Lines 7 through 18;  
21 and I believe that withdraws Exhibit 72. Because I  
22 think prior to that -- I don't think 72 is what's being  
23 referenced --

24 THE COURT: What about 104, 2 through 6?

25 MR. STANFIELD: We can take that out. So

1 104, Lines 2 through 18 can come out.

2 THE COURT: And I'm just going to keep  
3 going until you-all want to break for your lunch before  
4 we start with the jury. So I'm going to keep going  
5 until we do that, or do you want to break now?

6 MR. WOTRING: Your Honor, I'm going to need  
7 to break.

8 THE COURT: Let's do one more. Let's just  
9 do the one -- why don't we do 106 and then we'll stop,  
10 okay?

11 One of my questions about that was you've  
12 withdrawn 72, but hasn't he already answered that about  
13 the dredging? There was no objection to it, or that is  
14 the first time he does?

15 MR. STANFIELD: I think this is the first  
16 time he does with that time period, Your Honor. The  
17 prior question about that was noted to a specific  
18 objection where it was -- I'm trying find it. It's on  
19 Page 96, where he was specifically asked about the  
20 "despite the comments of TCEQ and Texas Parks, and the  
21 Port of Houston" --

22 THE COURT: Right.

23 MR. STANFIELD: -- in the early '90s, it  
24 was anyway, and the point here is to take it into 2007  
25 because of the ongoing dredging.

1                   MR. MUIR: Your Honor, then we would ask  
2 that 106, Lines 5 through 12 be included as well.

3                   THE COURT: Actually, I think that's fair.

4                   MR. STANFIELD: That's fine. We'll do that  
5 as optional completeness, Page 106, Lines 5 through 12.

6                   THE COURT: Okay. All right. We can  
7 break.

8                   (Discussion off the record)

9                   THE COURT: We are back on the record.

10                  Mr. Benedict?

11                  MR. BENEDICT: Yes, Your Honor. Over the  
12 past -- the last two weeks I made it clear that the TCEQ  
13 intended to offer some documents. I think we've  
14 discussed them, and I think the Court has said they will  
15 not be admitted, but I don't have express rulings. They  
16 weren't identified, so I would like to identify them and  
17 get the Court's ruling, if I could, to make an Offer of  
18 Proof.

19                  THE COURT: You may.

20                  MR. BENEDICT: I have seven documents  
21 currently. I have labeled them as Plaintiffs'  
22 Exhibit -- and to differentiate from the others, I'm  
23 using TCEQ 1, TCEQ 2 through 7, and so it will be easy  
24 to understand.

25                  The first document -- and I do have

1 certified for all these. I understand we're putting  
2 the Bates numbered set for convenience rather than  
3 certified.

4 TCEQ 1 is a July 22nd, 2005, letter from  
5 the TCEQ, addressed to Larry McKinney at the Texas Parks  
6 & Wildlife Department, Bates range State A5535 to 5538.

7 And, Your Honor, do you want me to offer  
8 them individually or collectively?

9 THE COURT: You may do them collectively at  
10 the end.

11 MR. BENEDICT: TCEQ No. 2 is a  
12 December 1st, 2005 letter from the Texas Commission  
13 on Environmental Quality, addressed to Mr. Samuel  
14 J. Coleman at the EPA in Dallas, Bates range State A5548  
15 to 5550.

16 TCEQ 3 is an April 11th, 2006 letter from  
17 the Texas Parks & Wildlife Department to Colonel Steve  
18 Haustein at the Army Corps of Engineers, Bates labeled  
19 State A5551 to 5553.

20 TCEQ 4 is a July 28th, 2006 letter from the  
21 TCEQ and, again, this is to Industrial Maintenance  
22 Corporation, Bates range State A5527 to 5530.

23 TCEQ 5 is a July 28th letter from the Texas  
24 Commission on Environmental Quality to Waste Management  
25 of Texas, Bates range State A5531 through 5534.

1 TCEQ Exhibit 6 may duplicate another  
2 party's exhibit which is not in, is a letter on the  
3 letterhead of Waste Management, dated September 14th,  
4 2006, to Marshall Cedilote at the TCEQ, but referencing  
5 McGinnes Industrial Maintenance Corporation. That's  
6 Bates range State A5480 to 5520.

7 And finally, Kim, and I'll have to read  
8 this one into the record. TCEQ 7 is a TCEQ Screening  
9 Site Inspection Report on the San Jacinto River waste  
10 pits, prepared in cooperation with the US Environmental  
11 Protection Agency, September 2006, Bates range State  
12 A0309811 through and including 311314. And it's  
13 actually in two separate redwell folders.

14 And those are the seven exhibits I'm  
15 offering, Your Honor.

16 THE COURT: The objections are sustained to  
17 TCEQ Exhibits 1 through 7, for the reasons that I've  
18 mentioned before in terms of previous rulings the Court  
19 has given, in addition to the fact that I think many of  
20 them are covered by the stipulation that is going to be  
21 read to the jury.

22 MR. BENEDICT: Your Honor, for the record,  
23 we would object to the overruling and I can go ahead and  
24 make the Offer of Proof. I offer TCEQ 1 through 7 now  
25 in an Offer of Proof for an equitable Bill of Review.

1                   THE COURT: Thank you, Mr. Benedict. The  
2 Court's ruling stands. The objections continue to be  
3 sustained to Exhibits 1 through 7, and that should take  
4 care of it for purposes of your Offer of Proof on the  
5 record.

6                   MR. BENEDICT: Yes.

7                   THE COURT: Thank you. We can go off the  
8 record.

9                   (After a lunch break, the following was had:)

10                  (Jury Present)

11                  THE COURT: Please be seated.

12                  Mr. Benedict, do you want me to address the  
13 issues with regard to TCEQ?

14                  MR. BENEDICT: Yes, I do.

15                  THE COURT: Ladies and gentlemen, I have  
16 two things to advise you. Number one, the parties have  
17 agreed that the TCEQ will present its claims for  
18 attorney's fees to the Court; and two, the parties have  
19 entered into a stipulation about the TCEQ. And I'm  
20 going to read that to you now.

21                  "After the TCEQ received the Texas Parks  
22 & Wildlife Department's April 2005 letter regarding  
23 dredging, the TCEQ continued sampling sediments as part  
24 of a Total Maximum Daily Load water quality study of the  
25 Houston Ship Channel system, and participated with the

1 United States Environmental Protection Agency," the EPA,  
2 "in investigating the site. The investigation efforts  
3 are documented in a five-volume report of approximately  
4 2,000 pages, dated September 2006, and entitled  
5 'Screening Site Inspection Report' prepared by the TCEQ  
6 and submitted to the EPA.

7 "In October 2008, the TCEQ requested that  
8 the United States Army Corps of Engineers," the Corps of  
9 Engineers, "suspend the dredging permit which had been  
10 extended by the Corps of Engineers in December 2007."

11 Mr. Benedict?

12 MR. BENEDICT: With that, Your Honor, the  
13 TCEQ rests.

14 THE COURT: All right. Ladies and  
15 gentlemen, I'll ask you to step out briefly and take  
16 care of a few matters; and we'll bring you back in for  
17 the next part of the case.

18 (Jury not present)

19 THE COURT: Please be seated.

20 Mr. Stanfield.

21 MR. STANFIELD: Your Honor, International  
22 Paper has two motions to make.

23 First, for all of the reasons that we've  
24 already argued yesterday and the day before to the  
25 Court, International Paper asks for an instructed

1 verdict on all claims that have been brought against it  
2 in this case.

3 MR. REASONER: Waste Management of Texas  
4 joins that motion.

5 MS. HINTON: MIMC joins that motion, Your  
6 Honor, as well, for -- and the additional reasons that  
7 MIMC stated yesterday, as well, in the instructed  
8 verdict motion.

9 MR. REASONER: As well as the additional  
10 reasons stated by Waste Management of Texas, Your Honor.

11 MR. STANFIELD: Of course, International  
12 Paper continues to incorporate all the arguments made  
13 by other parties for an instructed verdict.

14 THE COURT: And the motions for instructed  
15 or directed verdict filed by all of the defendants with  
16 regard to the TCEQ are denied, except as to the one  
17 motion for directed verdict that I have granted on the  
18 one facility issue.

19 MR. STANFIELD: Thank you, Your Honor.

20 Second, International Paper moves that the  
21 Court determine that TCEQ is not entitled to any fees.  
22 As you know, we kept that as a live legal issue for the  
23 Court, even though the amount may be considered  
24 reasonable; and we urge that because TCEQ has no claims  
25 in this case on which it can be a prevailing party. As



1 the Court is aware, TCEQ has not adopted all of the  
2 County's claims but, instead, is in this case because it  
3 is required to be in this case as a necessary and  
4 indispensable party. Without having any claims upon  
5 which it can prevail, it cannot recover fees.  
6 Therefore, we ask the Court to determine that TCEQ  
7 cannot recover any of its fees.

8 THE COURT: Okay.

9 MR. REASONER: Waste Management of Texas  
10 joins that motion.

11 MS. HINTON: MIMC joins that motion, as  
12 well, Your Honor.

13 MR. BENEDICT: Very briefly, Your Honor,  
14 there is no doubt the TCEQ is a party. That's one half  
15 of the prevailing party question. The statute provides  
16 for, in the event -- it provides for recovery of  
17 attorney's fees if TCEQ is a prevailing party. I'm  
18 hard-pressed if a judgment is entered in this case in  
19 which TCEQ gets half the penalty, how you could not  
20 consider them a prevailing party. We would have a  
21 judgment. It could be abstracted, just like in any  
22 case.

23 The claim -- they talked about Harris  
24 County filed it, but as a matter of law under the  
25 statute, the TCEQ has an interest in the outcome of

1 that. So we're joined at the hip on the claim. I think  
2 by any reasonable definition of prevailing party, and I  
3 have looked at some cases, the *Buchanan Bed*, a favorable  
4 Supreme Court case, getting relief is all that's  
5 required. We would get relief in the sense of a  
6 judgment. So I think we're a prevailing party and we  
7 would ask the directed verdict be denied.

8 THE COURT: The motion for directed verdict  
9 of all of the defendants is denied. If we need to  
10 address it further at the time that the attorney's fees  
11 are presented to the Court, we can do so at that time.

12 With that, are the defendants ready to  
13 proceed?

14 MR. CARTER: Yes, Your Honor.  
15 (Jury Present)

16 THE COURT: Please be seated.  
17 Mr. Carter.

18 MR. CARTER: Your Honor, at this time we  
19 would call Robert Zoch.

20 THE COURT: Would you raise your right hand  
21 to be sworn?

22 ROBERT ZOCH,  
23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 QUESTIONS BY MR. CARTER:

1 Q. Good afternoon, Mr. Zoch.

2 A. Good afternoon.

3 Q. Would you give us your full name, please?

4 A. Yes. Good afternoon, ladies and gentlemen. My  
5 name is Robert Zoch. That's spelled Z-o-c-h.

6 Q. Mr. Zoch, what do you do for a living?

7 A. I'm a chemical engineer and a registered  
8 professional engineer in the State of Texas. Currently,  
9 I do environmental consulting as my primary line of  
10 work.

11 Q. All right, sir. And in connection with this  
12 case, Mr. Zoch, we've asked you to look at a number of  
13 documents that have been gathered in the case; and  
14 you've also done some investigation yourself?

15 A. That's correct. I've examined the numerous  
16 documents that have been available in this case, and I  
17 have also done some of my own research and collected  
18 documents from my files that I maintain.

19 Q. All right, sir. And in that connection, we've  
20 asked you to look at those historical documents in  
21 connection with your expertise, and your expertise goes  
22 back some years?

23 A. I would agree with that.

24 Q. So how long have you lived here in the Houston  
25 or South Texas area?

1           A.   Well, I've lived in Texas all my life. I was  
2 actually born here in Houston at St. Joseph's Hospital,  
3 a couple miles back this way (indicating); and I've  
4 lived most of my life here in Houston. Currently, I  
5 live in Lincoln, Texas, which is little farming  
6 community about 50 miles this side of Austin.

7           Q.   And did you go to school?

8           A.   Yes. I went to school here in Houston and to  
9 the University of Houston, is where I did my higher  
10 education.

11          Q.   What degree did you graduate with from the  
12 University of Houston?

13          A.   I obtained a bachelor of science in chemical  
14 engineering from U of H in 1968, and then I continued on  
15 in graduate school in the fields of chemical  
16 engineering, civil engineering, and chemistry.

17          Q.   All right, sir. And then during the time that  
18 you were attending school, did you also work?

19          A.   Yes. The University of Houston had what was  
20 known as the cooperative education program, wherein we  
21 could alternate school and work semesters, thereby  
22 gaining hands-on experience, as it were, in the kind of  
23 activities that we were going to school for.

24                   I went to work for a petrochemical plant  
25 down in Dickinson, just south of here, when I was a

1 sophomore and alternated school and work semesters at  
2 that plant through 1968.

3 Q. All right, sir. Then what did you do after you  
4 graduated from college?

5 A. Well, I had been through all of the businesses  
6 of that particular plant, from research and development  
7 through process design and operations. So when I  
8 graduated, I became the -- the senior engineer -- senior  
9 plant engineer for that particular location.

10 Q. All right, sir. And then if you could give us  
11 just a little bit of your background from that point  
12 forward.

13 A. Sure. That was in 1968. In 1970 I became  
14 plant manager of the -- of the plant. At that time I  
15 also was asked to assist the corporate group. The  
16 corporate office was Marathon Manufacturing Company that  
17 was also headquartered in Houston. Since I had worked  
18 in some plant environmental issues going back to 1965,  
19 they asked me if I would also assist the corporation in  
20 some of the emerging environmental issues that were  
21 coming about in 1970. So I was plant manager and also  
22 the technical representative to the corporate  
23 environmental control committee.

24 Q. All right, sir. Did you at some point leave, I  
25 guess it was Marathon?

1           A.    Yes.  Well, I left the plant first and went to  
2 work full-time with Marathon.  I moved back to Houston  
3 from Dickinson and went to work for the corporate office  
4 as director of environmental control.  Marathon had  
5 about 30 operating facilities around the United States,  
6 so I had the environmental responsibility to coordinate  
7 their response to the new environmental regulations for  
8 all those facilities.

9                       That lasted through 1974, October 1974.  I  
10 had set up a corporate environmental laboratory.  I  
11 bought that laboratory from Marathon, formed my own  
12 consulting organization, and then consulted back to  
13 Marathon as my first client.  That really is what  
14 launched me into a consulting business.

15           Q.    All right, sir.  And that was in the year 1974?

16           A.    '74, yes, sir.

17           Q.    And then how long did you maintain that  
18 consulting business?

19           A.    Well, my business continued to grow and  
20 flourish with the new environmental regulations that  
21 were occurring; and in 1987, I took the company public  
22 on the American Stock Exchange.  And in 1990 it was  
23 sold.

24           Q.    All right, sir.  And then did you -- are you  
25 still associated with that company at this point in

1 time?

2 A. No, I'm not. At the time, the parent company  
3 that bought my company asked me to head up the  
4 international technology commercialization program for  
5 environmental technologies. So I spent a lot of time in  
6 Europe and other countries exporting some of the  
7 technologies that my company had developed for  
8 application here in the United States to those other  
9 countries. I did that for a few years, and then I  
10 formed -- I returned to consulting, really, by forming  
11 Zoch Consultants, which is me, actually. And that's the  
12 company that I operate under now.

13 Q. During the time period that you operated your  
14 company back in the -- that you formed in '74 up until  
15 the '80s or late '80s, early '90s, what type of work was  
16 that consulting company doing?

17 A. Well, I -- I had experience, having been in the  
18 corporate office, of dealing with all of the new air and  
19 water and environmental regulations; but the -- what was  
20 on the horizon were the industrial waste regulations  
21 that were ultimately passed in 1976 on the federal  
22 level. So with the passage of those regulations, with  
23 those laws, rather, and implementing regulations that  
24 came about in 1980, I developed a practice in industrial  
25 waste management, solid and hazardous waste, control,

1 treatment and disposal.

2 Q. And because of your time, not only in that area  
3 in the '70s, but going back even until when you were in  
4 college and working for the pharmaceutical company in  
5 Dickinson, had you gained experience over time with the  
6 way the regulations involving solid waste disposal have  
7 developed over time?

8 A. Absolutely. In 1965 there were no regulations  
9 and Texas didn't pass a Solid Waste Act until 1969. And  
10 I have maintained a working relationship in terms of how  
11 those regulations developed and what they required of  
12 industry and their response to those regulations.

13 Q. All right. So have you worked with other  
14 companies in your environmental consulting role to  
15 assist them in managing industrial or other waste  
16 issues?

17 A. Many. As a matter of fact, the companies on  
18 the Houston Ship Channel were my primary clients  
19 initially; and as the company grew, we developed a  
20 national presence. We had 30 offices in the United  
21 States, Canada, Mexico, Germany, France. And in doing  
22 so, we developed a working relationship with many of the  
23 larger companies in the country.

24 I maintained a working consulting business,  
25 even though I was president of the company. I had



1 administrative assistants that dealt with a lot of the  
2 running the company, because I liked working with the  
3 companies and solving their problems.

4 Q. And as part of your consulting role over the  
5 last few years, have you worked in situations where  
6 there have been Superfund sites that have been developed  
7 and where your expertise has been sought?

8 A. Yes. When the Superfund program came about,  
9 that was a normal extension of my work in industrial  
10 waste management; and I worked personally on over a  
11 hundred Superfund sites and virtually all of them in our  
12 area of Texas.

13 Q. As you know, we've retained you to assist us in  
14 this case to provide testimony and your knowledge and  
15 experience concerning the development of industrial  
16 waste regulations in Texas and the work that was done  
17 here in connection with these impoundments.

18 A. That's correct.

19 MR. CARTER: Jenn, if you could show the  
20 first slide.

21 Q. Just so we're on the same page -- just so we're  
22 on the same page, Mr. Zoch, I wanted to show you the  
23 agreement that the parties and the jury has heard  
24 before, that this is not a case about a Superfund  
25 process. Okay? Even though you may have been involved

1 in other cases involving the Superfund process, this  
2 case is not about that. Do you understand that?

3 A. That's my understanding. It's not about  
4 cleaning up the site.

5 Q. Yes. And it's not about the removal or the  
6 remediation of a site that's being performed and that's  
7 being paid for by the defendants here, and it's not  
8 about whether or not involvement -- participating in the  
9 Superfund process has any bearing on whether a party is  
10 liable under the Texas statutes being claimed here. And  
11 do you understand that?

12 A. I understand.

13 Q. Now, in connection with your consulting, have  
14 you also been retained in the past by the Connelly Baker  
15 firm that is representing the -- that's representing  
16 Harris County here?

17 A. Yes. On one occasion.

18 Q. All right, sir.

19 A. Actually, I did work with members of the firm,  
20 too, on some of these Superfund sites.

21 Q. And in connection with your work for the  
22 Connelly Baker firm in the past, have you actually been  
23 involved in the consulting role, similar to consulting  
24 with the attorneys like you've done here?

25 A. Yes.

1           Q.   And did you testify on the law firm's behalf or  
2 on their client's behalf?

3           A.   I wrote expert reports. We did not do any  
4 testimony. Those cases resolved themselves.

5           Q.   All right. Were you asked in this case by the  
6 Connelly Baker firm to assist them in connection with  
7 the development of their case, going forward?

8           A.   Early on I did receive a call from  
9 Mr. Connelly, yes.

10          Q.   That's Mr. Connelly with the Connelly Baker  
11 firm?

12          A.   Yes, sir.

13          Q.   And did he send you some information about  
14 that?

15          A.   Yes. We talked on the telephone, and he told  
16 me he would send me the complaint, or the pleadings.  
17 And I -- I did receive those.

18          Q.   All right. And then what happened after that?

19          A.   Well, I didn't hear anything from Mr. Connelly  
20 for a pretty good while; but after I'd read the  
21 pleadings, I pretty much decided that I would not work  
22 on that project on behalf of the plaintiffs.

23          Q.   All right. And then at some point you received  
24 a call from someone associated with one of the  
25 defendants?

1           A.    Several months later, I think in November of  
2 2013, I did receive a call from defendants.

3           Q.    All right.

4                   MR. CARTER:  Jenn, let's go to the next  
5 slide.

6           Q.    I want to direct our attention here, Mr. Zoch,  
7 a little bit.  What I have asked you to do in the case  
8 is to, as I mentioned -- let's go back to the -- to the  
9 time frame that we're talking about here in the '60s and  
10 -- '65 and '66.  I want to discuss with you the  
11 environmental regulations that existed for the disposal  
12 of -- for the disposal of waste during that period of  
13 time.  I also want to discuss with you some of the  
14 documents that you've reviewed as far as your historical  
15 practice, your knowledge to -- of Harris County's  
16 involvement, through Dr. Quebedeaux a little bit, and  
17 then some of the other defendants may wish to question  
18 you about some of the other issues in the case, such  
19 as -- such as your knowledge about and investigation of  
20 dredging aspects of the case.

21          A.    Fine.

22          Q.    But first I want to focus your attention on  
23 what was said by the County in opening statement.  And I  
24 put this slide up here because the County came forward  
25 and said that "This case is not about putting the paper

1 mill sludge in the impoundments at the beginning." And  
2 the way I interpret that statement, they're not talking  
3 about -- the County is not talking about and no longer  
4 talking about the actual disposal of the waste.

5 A. Yes, from that statement, that's the way I  
6 interpret it as well.

7 MR. CARTER: Let's go to the next slide,  
8 Jenn.

9 Q. Further on, he said, "This case is not about  
10 putting it in the site." In other words, it's not about  
11 disposing of the waste in the site. Is that your  
12 interpretation of it?

13 A. It is. That is what he said.

14 Q. Then he went further and he said, "It's about  
15 what happened after and the failure to maintain and look  
16 after the sludge for the next 35 years."

17 A. That seems to be the focus of the plaintiffs'  
18 case.

19 Q. And that the failure to maintain is the failure  
20 to maintain the site?

21 A. Right.

22 Q. Now, I want to ask you some questions about IP,  
23 International Paper, and Champion's responsibility for  
24 the site post the work done at the site and also during  
25 the time of the site; but I want to show you a couple

1 more slides first.

2 MR. CARTER: Let's go to the next slide,  
3 Jenn.

4 Q. We heard the other day from Dr. Pardue, who  
5 testified for Harris County, and he was asked the  
6 question:

7 "Dr. Pardue, do you recall when you  
8 appeared as the corporate representative for Harris  
9 County in this case and you were asked who was  
10 responsible for maintaining the pits, you did not  
11 identify Champion and you did not identify International  
12 Paper?"

13 And his answer was, "I recall that, yes."  
14 Were you here for Dr. Pardue's testimony?

15 A. Yes, I was.

16 Q. So what he's saying there, and correct me if I  
17 am wrong, but that Harris County is not -- is saying  
18 that International Paper and Champion were not  
19 responsible for maintaining the pits. Is that your  
20 interpretation of that?

21 A. That's the way I read that testimony, yes.

22 MR. CARTER: Let's go to the next slide,  
23 Jenn.

24 Q. We haven't heard from an expert that's been  
25 retained by Harris County yet, but we will hear some

1 testimony from him and his name is Dr. Davis Ford. Are  
2 you familiar with Dr. Ford?

3 A. Yes, I know Dr. Ford well.

4 Q. Have you worked on cases in the past with  
5 Dr. Ford?

6 A. On occasion we have worked on the same case  
7 together, yes.

8 Q. Does he have generally the same background and  
9 experience that you do?

10 A. Yes. Dr. Ford comes more from the wastewater  
11 background, where I come more from the industrial waste  
12 background. But we have represented similar and many  
13 times the same clients, and sometimes together. So,  
14 yes, we do have similar backgrounds.

15 Q. All right. Well, we'll hear from Dr. Ford, who  
16 is the expert from Harris County; but I want to show you  
17 some testimony because I want to see if there is any  
18 dispute between the County and you concerning who had  
19 responsibility for the ongoing maintenance obligation on  
20 the site or whether or not International Paper or  
21 Champion did, okay?

22 A. Okay.

23 Q. So the first question is: "Now let me ask you  
24 this: Would an entity that never owned the site have  
25 any ongoing maintenance obligations after discontinuing

1 its disposal operations on that site?

2 "ANSWER: You're talking about '60s?

3 "QUESTION: Yes.

4 "ANSWER: You're right.

5 "QUESTION: They wouldn't have any ongoing  
6 maintenance obligations on a site?

7 "ANSWER: Yes.

8 "QUESTION: That they didn't own, right?

9 "ANSWER: I'm sorry, yes."

10 The next slide, please:

11 "QUESTION: And back in the '60s, they  
12 didn't have any continuing maintenance obligations on a  
13 site they didn't own?

14 "ANSWER: That's right.

15 "QUESTION: And in addition, you're not  
16 aware of any post-closure requirements at the time these  
17 parties ceased taking waste to that site?

18 "ANSWER: I'm not aware of that."

19 Do you agree with Dr. Ford in the -- in his  
20 opinions that International Paper and Champion, who did  
21 not own this site, had any ongoing maintenance  
22 obligations regarding the site post closure?

23 A. That's correct. Back in the '60s there was no  
24 such obligation, and Dr. Ford -- his opinion reflects  
25 mine as well.



1                   MR. CARTER: Let's go to the next slide,  
2 Jenn.

3           Q. I'll come back to that one.

4                   So if I understand, then, correctly,  
5 Mr. Zoch, in your opinion, neither Champion -- Champion,  
6 nor International Paper had any maintenance obligations  
7 regarding this site post the operations ceasing in 1966?

8           A. Right, that's my opinion as well.

9           Q. All right. Let's turn for a minute, because as  
10 we've talked about, we've reviewed the testimony of --  
11 and the documents. Let's turn for a minute to the  
12 actual regulations that existed in the 1960s, and now  
13 we're going back to the mid '60s. And in opening  
14 statement someone even showed the fact that the  
15 Astrodome had just first opened in 1965 when this  
16 operation was ongoing, or just starting.

17          A. I was there.

18          Q. Did -- did -- were there any waste regulations  
19 in existence that governed how the -- this operation was  
20 to take place? And when I say "this operation," I'm  
21 talking about the removal of waste from Champion's  
22 facility and placing it, by a contractor, into a  
23 disposal site such as this.

24                   MR. WOTRING: Your Honor, I'm going to  
25 object. It calls for a legal conclusion.

1                   THE COURT: It will not be taken as a legal  
2 conclusion. You may answer, sir.

3                   MR. WOTRING: Can I have a running  
4 objection on that line?

5                   THE COURT: You may.

6           A. Yes, there really were no regulations regarding  
7 solid waste back in the mid '60s. Those had not been  
8 formulated yet. There were no regulations that affected  
9 how the wastes were placed into the pits at the time.

10          Q. (By Mr. Carter) So how did companies deal with  
11 waste? I mean, every company -- or everyone had waste  
12 back then.

13          A. Well, you got to put yourself back in that time  
14 period, because the way the Houston Ship Channel  
15 industry and Texas industry in general developed is it  
16 flourished after World War II; but most of the waste  
17 materials wound up in their liquid waste streams and  
18 they were just discharged to the streams back in those  
19 days. And so there wasn't a whole lot of waste  
20 generated.

21                   To the extent there was solid waste or  
22 sludge generated, most plants had an area in their back  
23 40, as it were, in the back of the plant where they  
24 could just bury it on the site, so that was the primary  
25 way of handling it.

1                   In the Houston area, offshore dumping in  
2 the Gulf of Mexico became a large way of handling  
3 problem streams at the time. So during the time period  
4 in question that we're talking about, those were the  
5 primary ways that those wastes were handled.

6           Q.    In dealing with offsite disposal, how did that  
7 come into existence?

8           A.    Well, when a plant didn't have enough space or  
9 ran out of space to dispose of their materials on site,  
10 they turned to their maintenance contractors to see  
11 whether they had someplace they could take it. And so  
12 some of the maintenance contractors, especially those  
13 that had vacuum trucks or dump trucks, began hauling  
14 industrial waste offsite as a service to their clients  
15 under their maintenance contracts.

16                   So that started occurring about this time,  
17 too, in the early '60s; but more importantly, back in  
18 the late '60s -- late '60s when some of the other laws  
19 came into effect, that became a standard practice.

20           Q.    All right, sir. And so at this point in time,  
21 was there anything unusual in the way that Champion  
22 was -- was maintaining its -- its waste or disposing of  
23 its waste?

24           A.    Well, actually, Champion's operations were a  
25 bit ahead of their time because they actually put in

1 separation devices to take the material out of the  
2 water, take these solids out of the water, before they  
3 discharged their effluent to the Houston Ship Channel.  
4 So unlike some of the other industries on the Ship  
5 Channel, they were actually doing some treatment in  
6 advance of there being any regulations.

7 Q. All right. And in connection with this  
8 particular removal and disposal operation where Champion  
9 contracted -- we've heard testimony about that, and  
10 we'll get into that a little bit more -- but Champion  
11 contracted with a third party to remove its waste from  
12 its facility and deposit it into an offsite disposal  
13 operation. Was there anything unusual about what  
14 Champion did in connection with that?

15 A. No. That became one of the areas of practice.  
16 As a matter of fact, the whole industry was born in  
17 dealing with those kinds of waste management activities  
18 about that time.

19 Q. Was it unusual for companies to seek out the  
20 head of the water and pollution control organization for  
21 Harris County to seek his approval for that type of  
22 operation, or to require his contractor to obtain that  
23 approval?

24 A. That was unusual.

25 Q. Why was -- why do you say that?

1           A.   Well, the chief environmental officer for  
2 Harris County was dealing primarily with air and water  
3 concerns, and he was in an enforcement capacity in that  
4 role. He really wasn't managing solid waste disposal  
5 issues.

6                       So for Champion to have required their  
7 contractor to approach Dr. Quebedeaux, and I'm sure  
8 you've heard his name already, but for them to require  
9 their contractor to approach him for approval went above  
10 and beyond normal practice at the time.

11          Q.   And was there any requirement for Champion to  
12 get a permit to dispose of the waste? Was that the  
13 reason why they were approaching Harris County?

14          A.   No, there were no permitting requirements on  
15 any level at the time, state, federal, or local. The  
16 issue was just to -- recognizing Dr. Quebedeaux's  
17 position and his passion for environmental control in  
18 Harris County, they felt, I guess, that it would be  
19 appropriate and prudent to do so.

20          Q.   All right. Did you know Dr. Quebedeaux?

21          A.   I did.

22          Q.   How did you know him?

23          A.   I met Dr. Quebedeaux on several instances. I  
24 guess the first time was when I was still in college at  
25 the University of Houston. I guess in the Winter of

1 1967, Dr. Quebedeaux came out and was complaining about  
2 the chemistry department emitting visible emissions from  
3 the fume hoods in the chemistry labs and he was going to  
4 fine the chemistry department. So they sent him over to  
5 the chemical engineering department to see if we  
6 could -- we could negotiate with him. And I had done  
7 some work in air pollution control, so I wound up being  
8 the one to meet with Dr. Quebedeaux, have him explain to  
9 me what his concern was, and assure him that we would,  
10 in fact, solve the chemistry department's problems so he  
11 didn't have to shut them down.

12 Q. And because you were operating in Dickinson,  
13 did you follow the activities of Dr. Quebedeaux over  
14 time?

15 A. Yes. In 1970, I had corporate  
16 responsibilities, as well, and Marathon had several  
17 facilities here in Harris County, Richmond Tank Car  
18 Company, the Metallic Building Company, several other  
19 facilities in Harris County that Dr. Quebedeaux visited  
20 on occasion.

21 I also just kept up with him just from  
22 reading the newspapers because since I started working  
23 in the environmental area in 1965, I was interested in  
24 seeing just where the only enforcement program in the  
25 area was going.

1           Q.    And when you say "the only enforcement  
2 program," you're talking about Dr. Quebedeaux's  
3 activities?

4           A.    Yes, the Harris County air and stream control  
5 division.

6           Q.    Now, we talked about 1965 for a permit. Was  
7 there a permit requirement in '65 or '66?

8           A.    No, neither year.

9           Q.    All right. So -- but when the contractor  
10 obtained the letter -- the letters, and we'll talk about  
11 those in just a second, what did that -- what does that  
12 signify to you?

13          A.    Well, as I said, it was kind of going above and  
14 beyond the requirement of the time; but they were  
15 seeking Dr. Quebedeaux's approval for the techniques  
16 proposed by the contractor. In fact, Dr. Quebedeaux  
17 assisted in the design and then the approval of proposed  
18 operations.

19          Q.    All right.

20                   MR. CARTER: Let's go to Exhibit No. 12,  
21 Jenn, Defendants' Exhibit 12.

22          Q.    We've seen this before. I just want to take  
23 you back now to little bit before the operation -- the  
24 actual disposal operations began. I'd like to talk  
25 about the time frame in March of 1965.

1                   Have you reviewed this document in  
2 connection with your investigation and work here?

3           A.    I have.

4           Q.    And in that connection, this is a recordation  
5 of a phone call from Dr. Quebedeaux on March 6 of 1995,  
6 and it's between -- and you understand Mr. Roderick and  
7 Mr. Henderson are with Champion?

8           A.    Yes. I've seen other documents that say that  
9 Mr. Roderick was the division manager and Mr. Henderson  
10 was the administrative manager, so they're both in  
11 management of Champion Paper Company at the time.

12          Q.    All right. And he refers in the second bullet,  
13 No. 2, "Was asked and did view Mr. Burns' method of  
14 handling and disposing of the sludge." Just to refresh  
15 everyone's memory, that's Mr. Bobby Burns who was with  
16 Ole Peterson and also had an engineering company, Burma  
17 Engineering?

18          A.    Correct.

19          Q.    And so what do you take from this -- this entry  
20 in this memorandum?

21          A.    Well, this is a telephone conversation that's  
22 being relayed that Dr. Quebedeaux had seen Mr. Burns'  
23 method of handling and disposing of the sludge. So they  
24 had followed Champion's -- Burns had followed Champion's  
25 guidance to approach Dr. Quebedeaux and tell him what he



1 was up to.

2 Q. Was this showing that this was -- that Champion  
3 and the contractor were attempting to be aboveboard with  
4 the County?

5 A. Absolutely.

6 Q. And, in fact, in No. 3 you mentioned this is  
7 the recordation that "He approved" -- he, being  
8 Dr. Quebedeaux -- "approved Burns' method of developing  
9 a pond and storing of these waste materials at the mouth  
10 of the San Jacinto River?

11 A. Right, that's what's conveyed.

12 Q. And then "Dr. Quebedeaux went further to say  
13 that he had inspected Burns' equipment and thought it  
14 was the best he had seen"?

15 A. Correct.

16 Q. Had Burns developed some specific equipment for  
17 this operation, itself?

18 A. Yes. I've seen some brochures from Burma  
19 Engineering that they had developed what they called a  
20 power pump, which was a method for transferring heavy  
21 sludges that were otherwise difficult to pump. And I  
22 believe that's probably what Dr. Quebedeaux was  
23 referring to.

24 Q. And then Dr. Quebedeaux relayed in this memo  
25 that he thought that the Burns' method was the most

1   satisfactory of any that he knew of for removal and  
2   disposal of the waste?

3       A.   Right.  The entire technique of how it got from  
4   the plant to the location, how it was managed at the  
5   location, that was Dr. Quebedeaux's impression.

6       Q.   All right.  So what do you -- what do you take  
7   away from this document in connection with your  
8   knowledge of disposal practices back in the '60s and  
9   your involvement and knowledge of Dr. Quebedeaux?

10      A.   Well, I think that Dr. Quebedeaux had become  
11   convinced that the proposal to manage this sludge that  
12   Mr. Burns had proposed for Champion was the right way to  
13   go.

14      Q.   All right.  And we've also seen Defendants'  
15   Exhibit 1436 --

16                   MR. CARTER:  Jenn.

17      Q.   -- which is the ultimate contract that was  
18   signed April 29th of 1965.  I believe that's the right  
19   date.  It's hard to read on this.  But -- so is it your  
20   view that had Dr. Quebedeaux not given his approval to  
21   go forward with this disposal operation, that this  
22   agreement would never have been entered into by  
23   Champion?

24                   MR. WOTRING:  Objection, calls for  
25   speculation.

1 THE COURT: Please rephrase.

2 Q. (By Mr. Carter) Do you have an opinion as to  
3 whether or not Champion would have gone forward -- based  
4 upon your review of all the information concerning this  
5 operation, do you have a view, an opinion, as to whether  
6 Champion would have even gone forward with this  
7 operation?

8 MR. WOTRING: Same objection.

9 THE COURT: Counsel, approach.

10 (After a bench discussion outside the  
11 hearing of the reporter and jury, the following  
12 proceedings were had:)

13 THE COURT: Sustained.

14 Q. (By Mr. Carter) What is the significance of  
15 this contract, as far as from your -- from your  
16 viewpoint, Mr. Zoch?

17 A. Well, this is a contract made between Champion  
18 and Ole Peterson Construction, which is one of  
19 Mr. Burns' companies; and this sort of culminates all of  
20 the planning that Champion had done in its due diligence  
21 of looking for an appropriate way of managing their  
22 waste. So this contract sort of is the embodiment of  
23 that effort.

24 Q. In fact, from your review of the documents,  
25 there had been even trial runs to -- to manage this

1 waste and dispose of it?

2 A. That's correct. There was a trial or a  
3 pilot run, as they called it, to demonstrate that  
4 Mr. Burns' equipment would work in this process.  
5 They also did some -- took Dr. Quebedeaux -- I think  
6 Mr. Burns and his wife actually took Dr. Quebedeaux out  
7 to the site so they could see it firsthand, so he could  
8 see it firsthand. So all of this was done in advance of  
9 this contract being entered into.

10 Q. And was that the type of work that a company  
11 back in the '60s would do in explaining -- going through  
12 the detailed process of explaining to the County  
13 authority for how its waste was going to be disposed?

14 A. In my experience, that was very unusual at the  
15 time. There was no requirement for that, and most  
16 companies did not do that at the time.

17 MR. CARTER: Let's go to Exhibit No. 30,  
18 Defendants' Exhibit 30.

19 Q. And do you recognize this document, Mr. Zoch?

20 A. Yes, I do.

21 Q. And this is the first letter from  
22 Dr. Quebedeaux addressed to Burma Engineering  
23 concerning -- concerning his view of the location and  
24 the -- and the description of the site?

25 A. Right. This is an approval letter to Mr. Burns

1 from Dr. Quebedeaux, based upon what he had seen and  
2 what he had heard from Mr. Burns about the plan.

3 Q. All right. And in the first paragraph, as we  
4 talked about previously here in court, he describes that  
5 he believes "the soil pond that we viewed again  
6 yesterday seems to be ideal for the purpose for which  
7 you intend to use it."

8 A. That's what he said.

9 Q. And he talks about the sides and the dikes  
10 being composed of clay, practically impossible for there  
11 to be seepage to escape into the river?

12 A. Which was what Dr. Quebedeaux's concern was.  
13 So, yes, I agree, he drew that conclusion.

14 Q. Then in the second paragraph -- and I want to  
15 address that for a minute. Dr. Quebedeaux goes further  
16 and says, "I would like to remind you," -- and again,  
17 "you" because it's being addressed to Burma -- it's  
18 addressing this letter to Burma Engineering, correct?

19 A. That's correct.

20 Q. "I would like to remind you again that your  
21 waste handling operation should be done in a manner  
22 which would not allow any liquid waste to leave the  
23 property and escape into the river."

24 What's he -- from your understanding of the  
25 operation, what is Dr. Quebedeaux relating there?

1           A.    What he's telling Mr. Burns is that while you  
2 are out there doing this waste disposal at this site and  
3 transferring water and all the other things that go with  
4 it, which we'll talk about here in a little while, I  
5 suppose, while you're doing all this, you got to make  
6 sure that that operation doesn't allow liquid waste,  
7 contaminated material, contaminated liquids to leave the  
8 property.

9           Q.    And then he follows up by saying, "We believe  
10 this could be done easily, but of necessity would  
11 require some careful handling."

12          A.    That's Dr. Quebedeaux's admonition, yes.

13          Q.    And that's the admonition to Burma Engineering  
14 to ensure that he uses care when he makes these  
15 transfers of the waste from the barge onto the -- to be  
16 disposed of in the waste site?

17          A.    That's what Dr. Quebedeaux is inferring, yes.

18          Q.    Let's go to Exhibit 1131, Defendants' 1131,  
19 please. Have you reviewed this document before,  
20 Mr. Zoch?

21          A.    I have.

22          Q.    All right. This is a note, is it not, from  
23 Mr. Roderick. It has "B," but it was Robert Roderick,  
24 Bob Roderick, to Jim Henderson within Champion; is that  
25 right?

1           A. I believe that's the kind of conclusion I came  
2 to as well.

3 Q. The note says, and it's short, so I'll just  
4 read it. "I have told Burns that this is so -- this is  
5 very nebulous in that it does not locate the property.  
6 He has gone back to Dr. Q for another letter."

7 Is he referring to the May 25, 1965 letter  
8 at this point in time?

9           A.     That's my impression, because the letter we  
10 just looked at, the May '65 letter, did not specifically  
11 say where the site was. It just said "the one he viewed  
12 yesterday." So the guys are talking about maybe getting  
13 something more specific to the actual location.

14 Q. And did that happen?

15 | A. It did.

16 MR. CARTER: Let's look at Exhibit 14 --  
17 excuse me, Exhibit 11.

18 Q. And did that -- did that change what is now the  
19 June 11, 1965 letter from Dr. Quebedeaux?

20 A. Yeah, a couple things about this letter. First  
21 of all, it's actually on Harris County letterhead. So  
22 this is more of a formal letter than what we saw before.  
23 Harris County Health Unit letterhead to Burma  
24 Engineering again, attention Mr. Bobby Burns.

25 And in this letter it says virtually the

1 same thing in terms of the two paragraphs, but it also  
2 now identifies the location as being on the west bank of  
3 the San Jacinto River, just north of the Highway 73  
4 bridge, which is the site in discussion in this matter.

5 Q. All right. Everything else about it is "ideal  
6 for the purposes for which you intend to use it." And  
7 then he says "in which Burns intends to use it,"  
8 correct?

9 A. Correct.

10 Q. And "This is particularly so since the bottom  
11 and the sides, dikes, are made of clay, which should  
12 render it practically impossible for seepage."

13 A. Same language as before; that was  
14 Dr. Quebedeaux's conclusion.

15 Q. The same language to Mr. Burns before, for  
16 during the operation, "Use care so that waste or water  
17 does not go into the river during transport."

18 A. Yeah. He was worried about liquid waste during  
19 the operation leaving the site, and that's -- that was  
20 his further admonition.

21 Q. All right. Taking these letters together, what  
22 is the significance to your opinions?

23 A. Well, first of all, this tells me that this was  
24 a preapproved site by the County; and they actually --  
25 even though there was no permitting requirement, this,



1 in effect, was an approval with some special conditions  
2 that applied to how the site should be operated.

3 It was unusual at the time, but it did give  
4 guidance to Mr. Burns on how he was supposed to conduct  
5 himself with respect to handling Champion's waste.

6 Q. All right, sir. Now, based upon your knowledge  
7 of the regulations back at that point in time, were  
8 there any rules or regulations or guidelines that  
9 applied to Champion at this point in time for the care  
10 of the site once the site was no longer being used?

11 MR. WOTRING: Your Honor, again, I'll  
12 object to calling for a legal conclusion to the extent  
13 he's going to offer a legal opinion from the stand.

14 THE COURT: It will not be taken as a legal  
15 opinion.

16 A. No, there were no such regulations.

17 Q. (By Mr. Carter) Let's turn our attention now  
18 to the site, itself. Let's go to, I believe, it's  
19 Exhibit 386. And this is -- I believe it's the  
20 aerial -- an aerial photograph, and it's from 1964.  
21 Would this depict the land upon which -- that the site  
22 was being developed a year before actually the work  
23 started?

24 A. Yes. This is 1964, so it was prior to any  
25 construction on the area; but I think y'all have

1 probably seen this before, but this is where the  
2 ultimate waste management unit was built in the  
3 following year.

4 Q. Is there any significance about this opinion --  
5 this photograph to you, as you review it, from the  
6 selection of -- from the selection of the site and the  
7 way the site ultimately was developed?

8 A. Well, the site actually was ideal, as  
9 Dr. Quebedeaux said, because it provided for barge  
10 transport to the area. So you wouldn't have to be  
11 taking hundreds of trucks through the City of Pasadena  
12 to get to this site. Barge transport was the obvious  
13 best way to get this volume of material to a disposal  
14 location. So the fact that we have an adjacent area to  
15 the river, which could receive barge traffic, as  
16 evidenced by the barges around there, that tells me this  
17 is a pretty good place.

18 Q. All right. What about the configuration of the  
19 land, itself? Is there anything about --

20 A. Well, there is kind of a ridge in the middle of  
21 this site; and the way the area was developed is the  
22 actual waste part -- waste management part was on the  
23 west side of that ridge and then some water management  
24 was on the east side of that ridge. That, again, the  
25 lay of the land was useful for how the facility was

1 going to be designed and operated.

2 MR. CARTER: Let's go to the '66  
3 photograph, Jenn.

4 Q. Now we see in this 1966 photo that the -- that  
5 the -- as Dr. Quebedeaux indicated, the -- the site has  
6 now been configured?

7 A. Yes. This is -- this is the waste management  
8 system that was constructed by Mr. Burns, or one of his  
9 contractors. It provides for a sludge management unit  
10 and a water management unit.

11 Q. What we've been calling the western  
12 impoundment, is that what you're referring to as the  
13 sludge management unit of the site?

14 A. Right. That's the way the system worked, is  
15 that sludge was deposited in the western part of the  
16 system and the western impoundment, if you will, and  
17 then it was de-watered from -- the water that was in the  
18 material as it was delivered to the site, or any  
19 rainfall was conveyed into the eastern part of the  
20 system, or the eastern impoundment for return back to  
21 the Champion Paper Mill.

22 Q. While we're getting oriented, what I'll call  
23 the circle in the middle, what is that?

24 A. Yeah. There's a little extension of the  
25 western impoundment within the eastern wastewater

1 impoundment. That was added later. From the  
2 documentation, I believe that was added in December of  
3 1965, because the western impoundment was filling up and  
4 they weren't quite finished with the project. So they  
5 needed a little bit more capacity.

6           There was capacity in the adjacent water  
7 management part of the system, so they added an  
8 additional part of the cell to expand the western sludge  
9 management unit.

10       Q. You mentioned the de-watering process. Why  
11 was -- why was the sludge or the waste needing to be  
12 de-watered?

13       A. Well, these sludges were generated by settling  
14 out of the mill's wastewater system. So it was a solid,  
15 if you will, that settled into their -- their ponds,  
16 which had to be removed. And the material would set up  
17 so hard that the only way to remove it would be to jet  
18 it out using high pressure water.

19           And when you use high pressure water and  
20 using Bobby Burns' technique of this RotoClone, as he  
21 called it, it required that there be enough water in it  
22 so it could be transferred hydraulically into the barge.

23           Then when it got to the site it was  
24 unloaded that way. It was a slurry, if you will. So  
25 there was water and solids together that went into the

1 western impoundment. And when it went in there, it  
2 would settle out, just like it did at the plant  
3 originally. The solids would settle to the bottom, the  
4 water would rise to the top. And the way the system was  
5 designed, there was a pipe that went through the  
6 intermediate dike that would allow the water to overflow  
7 into the water management part of the unit.

8                   Similarly, we get a lot of rain around  
9 Houston, so when it rained on the western part of the  
10 dike, that water could also be managed in the water  
11 management part of the unit.

12           Q. Then where did the water go that went into the  
13 eastern impoundment?

14           A. The way the system worked is that water that  
15 was collected in the eastern impoundment would be loaded  
16 back onto the barge and go back down the Houston Ship  
17 Channel to the Champion mill and be unloaded there and  
18 be put into their wastewater treatment system.

19           Q. Did we develop an animation that would describe  
20 this process?

21           A. Yes, we did.

22           Q. So this -- does this depict generally what you  
23 had just described the process going forward?

24           A. Yeah, these are kind of some schematics that  
25 give you the idea of how the -- how this process worked.

1 Would you like me to explain it?

2 Q. Yes, please. Let's go to number one.

3 A. Starting with the first one, this is just sort  
4 of a blowup of what this material looked like. It was a  
5 combination of fibrous material and inorganics, silts  
6 and lime and things from the pulping process, along with  
7 fibers, waste fibers that settled out at the plant. And  
8 they settled out in the plant basins and it was known as  
9 their paper mill sludge.

10 So that material -- as I said earlier, the  
11 only way to get it out once it settled in there and  
12 became hard is to use a high pressure water jet to  
13 actually cut the material, get it back into solution, so  
14 that Mr. Burns' HydroClone or Power Clone, as he called  
15 it, could then transfer that material into the barge.

16 There is various concentrations of water  
17 content that I've seen. Mr. Burns originally started  
18 with about a 10 to 12 percent concentration. There is  
19 evidence that --

20 Q. Of water or sludge?

21 A. I'm sorry?

22 Q. 10 to 12 percent?

23 A. Sludge, I'm sorry. 10 to 12 percent sludge in  
24 water. There is evidence, though, that some of the  
25 later operations went as high as 25 to 30 percent solids

1 content.

2 But, anyway, regardless of what the solids  
3 content was, that material was then loaded into the  
4 barge. The next step, then, was to transfer that barge  
5 down the Houston Ship Channel and to the site. It was  
6 about a seven mile -- seven to eight-mile one-way trip.  
7 When it got there, it was then loaded -- off-loaded into  
8 the western impoundment, again by pumping from the barge  
9 the slurry, which contained the solids in the water, the  
10 percentages that we talked about would go into that and  
11 then they would consolidate. The water would overflow  
12 and go into the water collection basin or impoundment to  
13 the east.

14 And then periodically they would -- they  
15 would offload that water into barges and return it back  
16 to the mill for disposal through the wastewater  
17 treatment plant.

18 Q. And why was it necessary to take the water  
19 back?

20 A. Well, the site wasn't big enough to hold all  
21 the water and the sludge; and the concern that there  
22 could be a possibility of any release required that the  
23 water be, first of all, collected and then sent back to  
24 the mill for proper management.

25 Q. All right. And so the western impoundment is

1 where the sludge is being -- is being deposited? Is it  
2 compacting?

3 A. It does.

4 Q. And that's what causes the water to go to the  
5 top?

6 A. Correct. The sludge is heavier than the water,  
7 just like it was at the plant. That's why it settled  
8 out. So the material, as it settled out at the site,  
9 had the same properties and the water would float on top  
10 of it.

11 So as the level of the sludge grows, the  
12 level of the water rose, the extent that eventually they  
13 could open up any plug they had on this and allow the  
14 water to flow to the eastern part of the impoundment.

15 MR. CARTER: Let's go to the next slide.

16 Q. So this is an aerial showing the upper pond and  
17 the lower pond. And this is showing the barge coming up  
18 to the site and to the filling point?

19 A. Yeah. This is kind of an animation that shows  
20 how that worked. The barge could pull up and be  
21 berthed. Then there was a pipe that took it into --  
22 piped it into the upper pond, as you call it. It was  
23 the western impoundment where the slurry was put. And  
24 that was the initial step in the process.

25 Q. So let's go to the next point. What does this



1 show?

2 A. Well, this shows where the de-watering point  
3 was, this being the filling point. The de-watering  
4 point was up at the north end from the center dike  
5 between the two sectors of the system, and that's where  
6 the water would then flow into the lower pond, which was  
7 at a slightly lower elevation and also slightly lower  
8 dikes.

9 Q. And how could it be a slightly lower elevation  
10 than the upper or western impoundment?

11 A. Well, it was just the lay of the land. The  
12 central portion of the property was at a higher  
13 elevation than the eastern part.

14 Q. So the -- the contractor took advantage of the  
15 lay of the land to be able to use gravity to put the  
16 water to the eastern side?

17 A. That's a good way to put it, yes.

18 Q. And then what are we showing here?

19 A. Well, this is kind of a cross-section. In  
20 other words, if you were to draw a line through the  
21 middle of these two ponds right at the unloading point  
22 and turn it on the side, this reflects the fact that the  
23 upper pond -- I lost it.

24 Q. Go back.

25 A. There we go. The upper pond is where the

1 sludge went out of the pipe, and then the water was  
2 drained into the lower pond.

3 Q. All right.

4 A. Let's go to the next one.

5 Q. What does this show?

6 A. This shows, again, the cross-section and how  
7 that really went schematically. In other words, each  
8 time a barge would come in, you would have a batch of  
9 this material that would be put into the western part of  
10 the system. After time, the solids would settle, the  
11 water would continue to rise; and that's what's depicted  
12 in this little cartoon.

13 Q. All right. Let's continue.

14 A. Yeah. At that point the upper pond had sludge  
15 settled in the bottom and also had water floating on the  
16 top, and that's when the water was allowed to flow  
17 through the center pipe into the water portion of the  
18 lagoon. Looking at a cross-section, and this time  
19 drawing the cross-section up here where the de-watering  
20 point is, you can see as the sludge filled up, the water  
21 would be on top. There would be some sort of a plug  
22 placed in the de-watering pipe during the time the stuff  
23 was settling, and that plug could then be removed and  
24 allow the water to flow into the lower pond, kind of as  
25 shown here graphically.

1                   So the water basically would be decanted  
2 off of the sludge and then that could be transferred  
3 back. As you can see, it kind of sloped down toward the  
4 river, so that water then could be pumped back to the  
5 barge and taken back to the paper mill.

6           Q. All right. And then the water goes back?

7           A. Yeah. This is just the final step of that  
8 process, is pumping the water. I don't know exactly  
9 where that pipe was that went back to the barge, but it  
10 was somewhere on this side of the pond because that was  
11 the deepest part of it.

12          Q. All right. So was -- in the way that this was  
13 engineered, Mr. Zoch, was it the intention of the  
14 contractor to use the eastern impoundment to be filled  
15 with sludge?

16          A. No. It was -- it was the water management part  
17 of the system to prevent there being a discharge, as  
18 Dr. Quebedeaux had cautioned.

19          Q. And we talked about it. If we go back to that  
20 aerial photograph from 1966, the '66 aerial, which I  
21 believe is -- yeah. This is what we see, and we see the  
22 circular part. Tell us again why they built that part.

23          A. Yeah -- I'm sorry. Did I hear something?  
24 Apparently, the western part of the sludge-handling  
25 system was nearing capacity. It was becoming full, and

1 as it was de-watered, it was getting close to the  
2 de-watering pipe. So in order to finish the project, it  
3 appeared that December of 1965 an additional internal  
4 dike was added, right here (indicating), into the  
5 eastern impoundment, which basically just expanded the  
6 capacity of the western part of the impoundment.

7 Q. Well, why would they need to do that, if they  
8 were going to use -- if they had all that room in the  
9 eastern impoundment to put sludge in?

10 A. Well, they didn't have that room to put sludge  
11 in. This had to be segregated for water only. That's  
12 the only way you could get sludge separation and return  
13 the water back to the mill.

14 Q. Well, that's not what Dr. Pardue said. He said  
15 that they put sludge in that eastern impoundment.

16 A. Well, I disagree with that part of Dr. Pardue's  
17 testimony.

18 Q. Why is that?

19 A. Because the fact is the way this system is  
20 designed to operate, the sludge was segregated from the  
21 water in order to make sure that it could be returned  
22 back to the mill.

23 Q. All right. Was there -- I believe Dr. Pardue  
24 also said that the site had insufficient capacity to  
25 hold all of the sludge, even after the -- that circular

1 part in the center was built. Do you agree with that?

2 A. Well, I heard Dr. Pardue's testimony. He  
3 didn't really explain that very well to us, but I did  
4 see his report. And I looked at how he arrived at that  
5 conclusion, and basically how he arrived at that  
6 conclusion is he assumed that all of the sludge and all  
7 of the water that came out with the sludge, along with  
8 all of the rainfall, stayed out here in the pit. And he  
9 said there wasn't enough room for that.

10 Well, there may have been enough room; but  
11 he probably is right. It probably was getting tight.  
12 The deal was, though, that he didn't account for the  
13 fact that we not only have rainfall in Houston, we also  
14 have evaporation, especially during the summer months.  
15 If you look at historical records, there is more  
16 evaporation in Houston, on average, than there is  
17 rainfall. So he didn't account for evaporation, number  
18 one.

19 But the big thing he didn't account for is  
20 the fact that this water that was separated from the  
21 sludge was actually hauled back to the mill. As such,  
22 in my estimation there was plenty of room for the sludge  
23 in the two areas shown.

24 Now, it turns out we don't have good data  
25 on what the size of these pits are; but just a

1 back-of-the-envelope calculation, making some  
2 assumptions, it's my opinion there was plenty of room  
3 for the sludge, once de-watered, to fill those two areas  
4 of the site.

5 Q. Did you see in your review of the documents and  
6 the materials that had been made available to you,  
7 evidence -- documentary evidence that water was actually  
8 barged back to the mill?

9 A. Oh, yes. There are some notes that demonstrate  
10 that -- as I said earlier, they did this in campaigns,  
11 as they called it. In other words, they didn't just  
12 take a barge load back every day. When they gathered  
13 enough water in the eastern lagoon, they would then make  
14 several loads over a week's time period to get rid of  
15 all the water that had accumulated for that time period,  
16 so as to not risk overflowing the dike.

17 Q. Was -- was there waste -- based upon the  
18 records and so forth, was there waste for any other  
19 facility in the Houston area deposited into this -- in  
20 this site by the contractor?

21 A. No. And I think that's an important  
22 distinction. This is what would be known as a monofil  
23 in the parlance of waste disposal. In other words, it  
24 took consistent type of waste from one particular source  
25 and that's all that went here. So once the material was

1 stabilized in this location, it contained no other kind  
2 of waste that might be incompatible.

3 Q. All right. Speaking of that, let's discuss for  
4 a moment the characteristics of the waste.

5 MR. CARTER: Let's go to Exhibit No. 17.

6 Q. And this we've seen before, too, Mr. Zoch.  
7 It's the State Department of Health's report from -- I  
8 believe it's from a visit to the site in April of --  
9 22nd of 1966. I think the report was written in May of  
10 '66?

11 A. Yes.

12 Q. So based upon your review of the documents,  
13 including the Department of Health documents, let's talk  
14 a little bit about the waste characteristics, the type  
15 of material it was. Can you describe it for me?

16 A. Well, I mentioned awhile ago it was from the  
17 pulp processing part of the mill operations; and in that  
18 process there were inorganic materials and organic  
19 materials, as they're called. The inorganic is stuff  
20 like silt and lime, things that are not water soluble  
21 that will settle out of the water. They're heavier than  
22 water, and then also some organic materials. The  
23 organic materials are waste fibers, things that didn't  
24 meet the specifications for making paper. Those are the  
25 kinds of materials that would be in the sludge.

1                   That would be in the wastewater stream,  
2 which at Champion was a very large volume amount of flow  
3 every day. That would flow out into the equalization  
4 and separation ponds and settle out. So it was a  
5 combination of fibrous material and inorganic solids,  
6 and that's what constituted the sludge material.

7           Q.   All right, sir.

8                   MR. CARTER: Let's turn to Page 2 of this  
9 document, and let's go up to the top third of it.

10          Q.   And the state investigator is saying -- he's  
11 describing in the subheading the quality of material  
12 removed. He says that "The material" -- in the second  
13 paragraph -- "appears to solidify rapidly." And then we  
14 have Mr. Henderson reporting to him that a vertical wall  
15 can be cut?

16          A.   Right.

17          Q.   What is the investigator describing there?

18          A.   Well, as he said earlier, analysis of the  
19 material is not available. There was virtually no  
20 analyses of waste materials from industrial sources done  
21 back in those days. There wasn't regulation. There  
22 wasn't any need to do analysis. So it's not surprising  
23 there wasn't an analysis of this material.

24                   But this does give -- without a chemical  
25 analysis, it does give some physical properties of how



1 this stuff looked, and this is one of those physical  
2 properties. It appears to solidify rapidly; in other  
3 words, the material would settle and form a solid and it  
4 would do it very rapidly.

5           The critical thing here, too, is that if  
6 you cut a vertical wall in it, it would stand on its  
7 own. And so that says it had some strength, it wasn't  
8 like mud that would just flow out. It actually had some  
9 strength to stand in a sheer wall, and that tells you a  
10 little bit about the characteristics of the material.

11       Q. In the paragraph before it says at the last  
12 sentence, it says, "Mr. McGinnes reported" -- and  
13 Mr. McGinnes at this point in time was with the  
14 contractor -- "reported that he had used it successfully  
15 for matting for his equipment in the disposal site."  
16 What did you take from that?

17       A. Well, what matting is is a way to support heavy  
18 equipment operating in muddy conditions. And so within  
19 the disposal site, as it was being developed, apparently  
20 Mr. McGinnes was able to use some of this material to  
21 support his heavy equipment. So it -- it was -- it had  
22 some strength in that regard as well.

23       Q. Then if we go back to the second paragraph,  
24 sort of the middle of that paragraph, it was also  
25 reported that "the material has set a short time, that

1 water will not penetrate it, that rain water will stand  
2 over it." What does that mean?

3 A. Well, that would suggest the material had very  
4 low permeability, as it's called. In other words, water  
5 won't seep into it; and that's been confirmed with some  
6 testing that's been done out there at the site. The  
7 material actually has a very low permeability  
8 approaching that of clay, so that would say that the  
9 material, or water, rather, would stand on top of it, as  
10 we discussed earlier, in the way the system would  
11 operate.

12 Q. Then it says in the next sentence, "It was  
13 further reported that grass can be started on the dry  
14 material and that it will spread rapidly, thus further  
15 cutting off water."

16 What was the investigator attempting to  
17 describe here?

18 A. That's an important parameter for a fill area  
19 because the establishment of a grass cover provides for  
20 water not standing on it and water not sulking into it,  
21 even in low permeability material. So what he's saying  
22 here is, number one, material is not phytotoxic, as they  
23 call it. Phytotoxicity means it's not toxic to plant  
24 life, so grass will grow on it without any concern for  
25 toxicity. But then it spreads rapidly so it provides an

1 additional cover to divert rainfall runoff.

2 Q. All right. Then we go to the next paragraph  
3 and this is where the description is of the material is  
4 removed by use of jetting, using wastewater from the  
5 third set of ponds. I take it that that's the  
6 description back at the mill?

7 A. Correct.

8 Q. And it is reported to be removed with a solid  
9 content of 25 to 30 percent, and that was the number  
10 that showed up in the diagram?

11 A. Right. That's where that number came from.  
12 And this was kind of at the end of the disposal  
13 operations into 1966, and it's likely that Mr. McGinnes  
14 had a different way of operating than Mr. Burns did, so  
15 he had a little bit higher solids content at the time.  
16 But, you know, still, to get it out of the plant, it had  
17 to be jetted in order to cut it, to get it -- to be able  
18 to move it and load it somehow.

19 Q. When this material goes into the -- into the  
20 waste pond, and I think it says it appears to solidify  
21 rapidly to the point where a vertical wall can be cut,  
22 where water can stand over it for a period of time,  
23 where it's impermeable or becomes impermeable or has a  
24 low --

25 A. Low permeability.

1           Q.    -- low permeability, grass starts to grow on  
2 it, trees can grow on it, it becomes part of the land?

3           A.    That's the way it sounds, exactly. It just  
4 becomes part of the impoundment. The dikes surround it.  
5 The dikes are sufficiently strong to hold the material  
6 until it all stabilizes, and there it is.

7           Q.    All right. And if we were going to come in  
8 and -- and try to remove it at the point where it has  
9 taken these characteristics, solidified rapidly, have  
10 to -- if you could cut a vertical wall in it and so  
11 forth, what type of equipment would we have to use to do  
12 that back in that -- back in the day?

13          A.    Back in the day, it would take some very heavy  
14 earth-moving equipment to do that, or it would take  
15 another jetting activity, like the way it was hauled  
16 from the plant site to begin with. It would be  
17 difficult in any case because it's a very confined area  
18 and getting this material back out of those pits would  
19 not be easy.

20          Q.    Would you -- would you think that the land  
21 would be damaged if you had to do that type of  
22 operation?

23          A.    Oh, definitely, because the pits basically took  
24 up the entire area on the western side of the land that  
25 was part of this process.

1           Q.    Now, the other side has -- has pointed out,  
2 right above the yellow highlighting there in the first  
3 paragraph, the description by the investigator, "the  
4 dried material resembled a cheaper grade of cardboard,  
5 such as used in egg cartons," et cetera. I think you  
6 were here when Dr. Pardue was giving his testimony and  
7 talking about this got into the water and it  
8 deteriorated like cardboard. Is that your understanding  
9 of the type of material that we have here?

10           A.    No. What's described here is what it looked  
11 like visually. In other words, if you looked at a blob  
12 of this stuff and it was dry -- that's the other thing  
13 it says here, "the dried material." Once it was dried,  
14 this fibrous material would kind of look like cardboard,  
15 like egg cartons; but that says nothing about the  
16 physical characteristics of it that we've discussed here  
17 already, because cardboard is basically organic  
18 material. It's just fibrous. It doesn't have a lot of  
19 these solids in it, these inorganics, water insoluble  
20 material. So this was not cardboard. It had very  
21 different characteristics of cardboard.

22           Q.    Okay. And if we go to --

23                       MR. CARTER: I believe it's the next page,  
24 Jenn, where it says "Excess water in its disposal" in  
25 the middle of the paragraph.

1           A.    Yes.

2           Q.    Does this describe the operation -- the  
3 de-watering operation in the words of the investigator  
4 by the State Department of Health back at that time?

5           A.    Yes, it does; and this is his description of  
6 the last step in implementing the process at the site.

7           Q.    All right.

8                   MR. CARTER:  If we go to the last page of  
9 this exhibit, which is the map.

10          Q.    If we look at this, this is April 22nd of 1966,  
11 and this is just a short period of time before the  
12 disposal operations stopped at the site by the  
13 contractor; is that right?

14          A.    Yes.  The disposal operations at this site  
15 ceased May 10th of 1966.  This would have been a few  
16 weeks before that, and this shows what the condition of  
17 the upper and lower ponds were at the time.

18          Q.    Okay.  And the upper pond is -- or the western  
19 impoundment is the one closest to the bottom?

20          A.    Yes.  The north there is kind of this way  
21 (indicating).  So it's not up.  This is actually the  
22 western pond and this is actually the eastern pond  
23 (indicating), with the extension of the sludge  
24 management unit in the middle.

25          Q.    All right.  In the shaded area, what does that

1 represent on this drawing?

2 A. The cross-hatched areas are areas where the  
3 inspector identified as containing water.

4 Q. And would that be consistent with the  
5 de-watering operation that is ongoing and the design of  
6 the facility, as not only you have described it, but  
7 also as described in the Department of Health --

8 A. Yes, it is.

9 Q. -- report? So the water would collect to the  
10 eastern side so it could be put on barges and barged  
11 back to the facility?

12 A. Yeah. You see he points out the fact there is  
13 a little water standing on top of the sludge. That just  
14 has -- didn't get drained over to where this pipe is  
15 that drains from the west to the east. The rest of it  
16 appears to be stabilized and solidified material.  
17 Similarly, in the center sludge extension part. But  
18 then the water is what is being stored in the outer part  
19 of the eastern impoundment, and that's prepared to be  
20 hauled back to the mill.

21 THE COURT: Mr. Carter, I think the jury  
22 needs a break. Let's take a break. You may step down,  
23 too, sir.

24 (After a break, the jury was present and  
25 the following proceedings were had:)

1 THE COURT: Please be seated.

2 You may continue, Mr. Carter.

3 MR. CARTER: Thank you, Your Honor.

4 Q. (By Mr. Carter) Mr. Zoch, I just have a couple  
5 more questions. First of all, going back to the -- to  
6 the de-watering operation and the eastern impoundment, I  
7 think you also called it the lower pond, based upon your  
8 review and your analysis of the documents and the  
9 investigation that you conducted, do you have an opinion  
10 as to whether or not sludge, waste was deposited into  
11 the eastern impoundment during the time of operation,  
12 1965 and '66?

13 MR. WOTRING: I object as calling for --  
14 it's vague. The eastern impoundment has been divided.

15 MR. CARTER: Well, not the central circle,  
16 but eastern -- the eastern impoundment where the  
17 de-watering operation was occurring.

18 THE COURT: You may answer, sir.

19 A. Yes, I do have such an opinion. The way the  
20 system was designed, as I described it, that no waste  
21 was intentionally or directly put into that water  
22 section of the eastern impoundment. However, I can't  
23 rule out the possibility a little bit may have come  
24 across. When the western pond was de-watered, it was  
25 allowed to settle before the water was released. It



1 could have been a little bit, but it would have been a  
2 very minor amount, and no significant amount was pumped  
3 directly into the water section of the unit.

4 Q. Then one final question. When waste -- when  
5 the waste disposal operations were ceased by the  
6 contractor, I believe in May of 1966, did you see any  
7 indication through your review of any further disposal  
8 after that date?

9 A. No. That's the last disposal I saw was -- I  
10 believe it was May 10th of 1966.

11 Q. At that point in time was there any requirement  
12 by Champion, from a regulatory standpoint, to provide  
13 ongoing maintenance to the site, ongoing inspections or  
14 ongoing monitoring?

15 A. There was no such requirement.

16 MR. CARTER: Pass the witness, Your Honor.

17 CROSS-EXAMINATION

18 QUESTIONS BY MS. GRAY:

19 Q. Good afternoon, Mr. Zoch.

20 A. Good afternoon.

21 Q. I represent MIMC, McGinnes Industrial  
22 Maintenance Corporation. You have worked and are  
23 appearing in this case on behalf of all three  
24 defendants; are you not?

25 A. That's correct.

1           Q.   And your opinions that you are offering this  
2 jury relate to the positions of the three defendants in  
3 this case, correct?

4           A.   Yes.   And my opinion of how they're situated,  
5 exactly.

6           Q.   Well, let's reorient ourselves back to the role  
7 that MIMC played in this.  You say that operations  
8 ceased May 10th of 1966.  When did MIMC become involved  
9 in this operation, based upon your review and  
10 investigation of the records in this case?

11          A.   It appears to me that MIMC became involved in  
12 about September the 10th of 1965.  I think the first  
13 waste may have been hauled some days after that.

14          Q.   So in the construction of the impoundment, have  
15 you formed an opinion with regard to who constructed the  
16 site that we've been talking about?

17          A.   Yes, I have.

18          Q.   And who is that?

19          A.   Well, initially the facility was constructed by  
20 Mr. Burns and/or his contractors or companies.  He, in  
21 fact, apparently constructed two phases, one in about  
22 May of '65 and one again then in August of '65.

23                       MIMC -- Mr. McGinnes, actually, apparently  
24 did some construction for that center section that I was  
25 talking about in December of '65; but that's my analysis

1 of how the facility was built.

2 Q. And do you recall when MIMC obtained the  
3 assignment of the contract between Champion and Ole  
4 Peterson that we've talked about here today?

5 A. It was in September of '65. I don't recall the  
6 exact date.

7 Q. Okay.

8 MS. GRAY: If we could pull up Defendants'  
9 Exhibit 128, and if we could look at the top third of  
10 it.

11 Q. First, Mr. Zoch, have you seen the assignment  
12 of the contract before today?

13 A. Yes, I have.

14 Q. And does this refresh your recollection with  
15 regard to when the contract between Champion and Ole  
16 Peterson was assigned to MIMC?

17 A. Not really.

18 Q. Okay. Well, let me direct your attention to  
19 the date, hopefully, if I can get it. If you would turn  
20 to the second page, down at the bottom where it says "In  
21 testimony whereof," do you see that?

22 A. Yes.

23 Q. And does that reflect that the assignment of  
24 the contract from Ole Peterson to McGinnes occurred on  
25 September 15th of 1965?

1           A.    That's the way I read it, yes.

2           Q.    So if I understand correctly, other than the  
3 central levees that were used to expand the placement of  
4 the sludge into the eastern impoundment, the outer  
5 levees and the central berm were constructed by  
6 Mr. Burns through Burma Engineering?

7           A.    Or his contractors. That's my analysis of the  
8 history, correct.

9           Q.    Okay. Now one thing that we haven't talked  
10 about that has been the subject of some prior testimony  
11 by the plaintiffs is what these levees were constructed  
12 of. Do you have a view, based upon your review and  
13 investigation, of what the material was that the berms  
14 or levees were constructed of?

15          A.    Yes. The way the construction occurred is the  
16 dikes and the levees, as they're called interchangeably,  
17 were constructed of materials that were excavated  
18 directly from the location where they were built, and  
19 that material has shown to be a clay-type material.  
20 That's confirmed by Dr. Quebedeaux, by the way.

21          Q.    And have you seen any documents that support  
22 your view that there was clay in the vicinity of the  
23 location of this site which would have been a source of  
24 the clay used to construct the levees?

25          A.    Yes. I have seen documentation that there was

1 clay immediately beneath the location of where these  
2 impoundments were constructed.

3 Q. Okay. And what -- what was MIMC's role, as you  
4 understand it, in connection with these operations  
5 beginning on or around September 15th, 16th of 1965?

6 A. Well, MIMC was assigned the contract. So they  
7 just basically took over for what Ole Peterson and  
8 Mr. Burns had been doing in the previous months.

9 Q. And did MIMC, as the operator of this facility,  
10 need a permit from Harris County in 1965 to operate at  
11 this site?

12 A. No. There was still no permit requirements.

13 Q. Did it need a permit from the State of Texas to  
14 operate this site in 1965?

15 A. No.

16 Q. The same questions with regard to Harris County  
17 and the State with regard to 1966, did MIMC need a  
18 permit to operate this waste disposal site?

19 A. No permits were required in '66 either.

20 Q. All right. And have you reviewed -- first of  
21 all, let me take us back to the original contract  
22 between Champion and Ole Peterson. Based upon your  
23 review and investigation in April of 1965, did you form  
24 an opinion with regard to who held the record title to  
25 the site at issue?

1           A.    In '65?

2           Q.    Yes, in 1965.

3           A.    I know that Ole Peterson was the contractor for  
4 the site. I have not seen anything that they held  
5 particular title to the site.

6           Q.    Are you aware that at some point in August --  
7 early August of 1965, title was transferred to  
8 Mr. Virgil C. McGinnes, Trustee?

9           A.    Correct. And that apparently was directly from  
10 the owner, Mr. Spata, and Mr. Virgil McGinnes, as  
11 trustee, obtained that 20-acre tract in a conveyance. I  
12 believe it was dated August 3rd, '65.

13                   MS. GRAY: Let's pull that up, then,  
14 Defendants' Exhibit No. 5. Let's just confirm. If we  
15 blow up the top half.

16           Q.    That is a General Warranty Deed. Have you  
17 reviewed this in connection with your investigation of  
18 the matters at issue in the case?

19           A.    Yes. This is actually the document that I was  
20 referring to that gave me information I just described.  
21 It turns out that it was jointly owned, apparently, by  
22 Mr. Gordon and Mr. Spata together, with Mr. Spata's wife  
23 at the time of the conveyance.

24           Q.    And it is a conveyance of the site to Virgil  
25 C. McGinnes, Trustee?

1           A.    That's correct.

2           Q.    And have you found any other documents or any  
3 other transfer of title to this property to McGinnes  
4 Maintenance Industrial Corporation?

5           A.    I have never seen anything, no.

6           Q.    I think it's McGinnes Industrial Maintenance  
7 Corporation, as opposed to the other way around. Have  
8 you?

9           A.    No, I have seen no transfer of this property  
10 from Mr. McGinnes as trustee.

11          Q.    As an operator, or a former operator of the  
12 site, once in 1966, once that site was closed, would  
13 MIMC have had any continuing obligation to maintain the  
14 site?

15                   MR. WOTRING: Again, objection to the  
16 extent she's asking for a legal opinion from this  
17 witness.

18                   THE COURT: It will not be taken as a legal  
19 conclusion. You may answer, sir.

20                   THE WITNESS: Thank you.

21          A.    No, at the time there were no requirements for  
22 any continuing -- or no obligation for continuing  
23 maintenance of the site by anybody.

24          Q.    (By Ms. Gray) And are you familiar with the  
25 three statutes that the plaintiff, Harris County, is

1 relying upon in connection with imposing civil penalties  
2 on the defendants in this case?

3 A. Yes. I've done some work with each of those  
4 statutes on behalf of my clients.

5 Q. And can you just remind the jury what those  
6 three statutes are?

7 A. Well, the Spill Act, the Water Quality Act, and  
8 the third one escapes me right now, to tell you the  
9 truth.

10 Q. Does the Texas Solid Waste Disposal Act --

11 A. The Solid Waste Act, that's the right one.

12 Q. There you go. We'll go in reverse order. Was  
13 the Texas Solid Waste Disposal Act already in place in  
14 1965 and '66?

15 A. No, it wasn't.

16 Q. How about the Texas Spill Act, had that been  
17 passed by the Texas Legislature in 1965 or 1966?

18 A. No, it wasn't in existence either.

19 Q. And how about the Texas Water Code?

20 A. It had not been established either.

21 Q. Okay. All right. And I think that we've  
22 already covered the opinion by one of Harris County's  
23 experts, Dr. Ford; and I'd like to pull up that last  
24 slide of Dr. Ford's testimony in this case.

25 You'll see that he was asked the question,



1 "And back in the '60s, they didn't have any continuing  
2 maintenance obligations on a site they didn't own?"

3 And his answer was, "That's right."

4 He was also asked, "And, in addition,  
5 you're not aware of any post-closure requirements at the  
6 time these parties ceased taking waste to that site?"

7 And he answered, "I'm not aware of that."

8 Do you have an understanding that the  
9 parties being referenced there, whether that includes  
10 MIMC?

11 A. That's my understanding, it would include MIMC  
12 as not having an obligation.

13 Q. Okay.

14 MS. GRAY: Thank you, Mr. Zoch.

15 No further questions.

16 THE COURT: Thank you.

17 Mr. Reasoner.

18 MR. REASONER: May I proceed, Your Honor?

19 THE COURT: Yes.

20 CROSS-EXAMINATION

21 QUESTIONS BY MR. REASONER:

22 Q. Hello, Mr. Zoch.

23 A. Good afternoon.

24 Q. I wanted to clear one thing up quickly that  
25 I've got four or five notes on when you said it to

1 Mr. Carter. I think I knew what you were saying, but I  
2 just wanted to make it clear.

3 MR. REASONER: Jenn, if we could go back to  
4 the photo that have 386-18, Exhibit 386-18, and zoom in  
5 a little bit.

6 May I approach, Your Honor?

7 THE COURT: Yes.

8 Q. (By Mr. Reasoner) You were explaining to the  
9 jury the western part and the eastern part, and you  
10 said, I think, the western part is a waste management  
11 facility and the eastern part is a water management  
12 facility. Since I represent a company called Waste  
13 Management of Texas, I just wanted to be clear, when you  
14 are talking about the western side, what are you talking  
15 about when you say a waste management part?

16 A. What I was referring to is it was an area where  
17 wastes were managed, not that it was Waste Management's  
18 facility. That's a fortuitous name, I guess.

19 Q. Well, it's descriptive of what we do, right?

20 A. Correct.

21 Q. And as I understand it, sir, you have gone  
22 through, as you were telling Mr. Carter and the jury,  
23 and done a pretty exhaustive review of some of the  
24 historical documents, in light of your expertise in this  
25 situation; is that right?

1           A.    I have.   And that's kind of where I start on  
2 any of these projects like this, is I try to gain as  
3 much contemporaneous -- in other words, the kind of  
4 information that was available at the time --  
5 documentation as I can.   And that's where I started on  
6 this project.   I looked at thousands of documents.

7           Q.    And let me ask, sir:   Looking at the time frame  
8 when this was -- this facility was built and was in  
9 operation, did you find any evidence of Waste Management  
10 of Texas having activity or participating in the  
11 construction or operation of this site?

12          A.    No, I never saw that name in any of the  
13 documents.

14          Q.    All right.   And how about with respect to GC  
15 Environmental during that time frame when the site was  
16 built or operated?

17          A.    Again, during that time period, I saw no  
18 documents with that name on it, either.

19          Q.    And then moving forward, sir, from when the  
20 site stopped being used in 1966 until the end of the  
21 penalty period, again, did you see any activity or  
22 participation with respect to this site from Waste  
23 Management of Texas?

24          A.    I did not.

25          Q.    And how about with respect to GC Environmental?

1           A.    I did not.

2           Q.    Okay, sir.  We have heard -- the jury has heard  
3 some talk and seen a few things over time about  
4 dredging, and I want to ask you about that.  First of  
5 all, what is hydraulic dredging?

6           A.    Hydraulic dredging is a technique for removing  
7 granular materials from the bottom beneath water or  
8 adjacent to water, using a way to slurry those materials  
9 with water and then transfer them to shoreline or a  
10 separation device.  That's typically referred to as  
11 hydraulic dredging.

12          Q.    What are the reasons that dredging is done,  
13 possible reasons?

14          A.    Any time you want to get material out of a  
15 water body -- it started out primarily being for  
16 navigational purposes.  For instance, when the Ship  
17 Channel was built, it was hydraulically dredged.  When  
18 the Intracoastal Canal was built, it was dredged as  
19 well.

20                       But it also then, over the years, includes  
21 ways to gather construction materials.  Dredging was  
22 used for gathering oyster shell.  Back when Houston was  
23 being built, a lot of our roads were made out of oyster  
24 shell.  It came from the bay; it was hydraulically  
25 dredged.

1                    Similarly, sand was dredged as a  
2 construction building material and gravel in some cases.

3            Q.    Has there -- over a period of time has there  
4 been a good bit of dredging in the Houston area?

5            A.    There has been a large amount of dredging done  
6 in Houston and Galveston counties.

7            Q.    Why is that?

8            A.    Some very good construction material deposits  
9 here. I mentioned oyster shell, but sand and gravel are  
10 also abundant in our river basins. And as Houston grew,  
11 for housing and for commercial establishments, they  
12 needed a lot of those kinds of material and they were  
13 gathered locally, many by hydraulic dredging.

14          Q.    And sand that goes into concrete?

15          A.    Sand goes into concrete. It goes into sand  
16 stabilized oyster shell back in the old days when oyster  
17 shell was still being dredged. It's used for a lot of  
18 purposes.

19          Q.    Is dredging something you have observed and  
20 been familiar with over the years?

21          A.    Yes. When I was down in Dickinson, Parker  
22 Brothers had a big yard, a big dredging yard next to my  
23 plant; and I used a lot of their materials in some of my  
24 construction projects for the plant. And I was  
25 interested in how that worked, so I actually got a ride

1 on a dredge barge one day to go out and actually see it  
2 firsthand.

3 Q. All right, sir. And we've got --

4 MR. REASONER: Jenn, if you would put up  
5 that first demonstrative slide.

6 Q. We do not have pictures of Captain Jack  
7 Roberts' dredger here. I'm just using these for  
8 demonstrative purposes. If you could, show the jury --  
9 and do you have a pointer, sir?

10 A. I do.

11 Q. Great. If you could, show the jury the types  
12 of dredgers that we're looking at. As I understand it  
13 from talking to you, the two on the right side are one  
14 kind and the two on the left side are another kind.  
15 Could you walk us through that?

16 A. Sure. For hydraulic dredging there's really  
17 two types that are frequently used. One is what is  
18 called a suction dredge, and what that is is depicted in  
19 the two schematics to the right. Basically, what it is  
20 is a tube is lowered into the material to be removed in  
21 the granular substance and it's fluidized and sucked up  
22 into the tube and up into the barge where the pumping  
23 device is, and then transferred or conveyed over to the  
24 shore facilities.

25 That's useful where you have material that

1 flows, like free-flowing sand can be gathered with a  
2 suction dredge like this.

3           The other kind is called a cutterhead  
4 dredge, which is similar in the way it works. In other  
5 words, it's still a suction, but it includes a  
6 cutterhead on the end of it, which is a device that  
7 actually cuts up the material and fluidizes it, puts it  
8 in small enough particle size to where the hydraulic  
9 dredge will suck it up and put it in the pump.

10       Q. Under what circumstances do you need to use the  
11 cutter-head type of dredger?

12       A. The cutterhead dredger is used where you have  
13 more solid materials. For instance, in the sand  
14 operation that we're talking about at this site, the  
15 cutterhead would have been used to cut through the  
16 overburdened clays to get to the sand below it.

17           MR. REASONER: Can you take us to the next  
18 slide, Jenn?

19       Q. Again, we have -- I think on the right is the  
20 cutter dredge; is that right?

21       A. That is what one of them looks like, exactly.  
22 It's a pretty formidable looking device.

23       Q. On the left is a demonstrative there. Can you  
24 show the jury just the parts of the dredger there, so  
25 they will be familiar?

1           A.    Yeah.  The dredge barge, itself, is just a  
2  flotation device.  It has the hydraulic system on it,  
3  the pump, is basically what that means.  Then it has a  
4  crane that raises and lowers and positions the suction  
5  tube, whether it has a cutterhead on it like this or  
6  just a suction tube.

7                        To position the dredge, first is what is  
8  called spuds, and there can be anywhere from one to four  
9  of these spuds located in different areas of the dredge.  
10  They're hydraulically lowered into the base of the water  
11  body where the dredging is to take place, in order to  
12  position the dredge in place.

13                      Then there is a pipe that leads from the  
14  dredge; and, as I say, goes to the shore in many cases  
15  or might just go to a barge, if you're dredging things  
16  like oyster shell.  But that's generally the way the  
17  operation worked.

18                      MR. REASONER:  Let's go to the next slide,  
19  if we could, please.

20           Q.    What are we looking at here?

21           A.    Well, this is another view of a dredge that is  
22  spudded, as they call it, because the spuds are down  
23  into the -- into the subgrade.  This happens to have a  
24  cutterhead on it, and they're positioning it with this  
25  crane-type process and they can move it from side to



1 side, again, with pulleys and anchors, so that the  
2 dredge head can be moved from side to side to remove the  
3 material from the sides of the -- of the water.

4 Q. Okay. I see the tube -- if we can go to the  
5 next slide, I see the tube going out the one side of it  
6 there?

7 A. Right.

8 MR. REASONER: If you could take us to the  
9 next slide or two, Jenn.

10 Q. What do we see there, sir?

11 A. That tube coming off of the hydraulic pump  
12 usually has some pontoons on it so it floats. But then  
13 that transfers the materials onshore or onto a barge.  
14 Most of the time it goes onshore and goes either into a  
15 de-watering lagoon or goes into some sort of further  
16 processing equipment to recover the valuable material.

17 Q. All right. So I want to -- thank you for that.  
18 I want to talk about what you found about the history of  
19 dredging with respect to this particular site, now that  
20 we know something about it in general.

21 First let me ask you, before we get into  
22 that, is there any evidence of any kind that any of  
23 these defendants were involved in the dredging that took  
24 place on the San Jacinto River near this site?

25 A. No, I have seen none, not at any time.

1           Q.   And have you been able to identify who was  
2 doing the dredging?

3           A.   Yes.

4           Q.   And we'll talk about that. Before we get into  
5 it, how did you obtain the documentation about dredging?

6           A.   Well, when I started on the project, I was sent  
7 a couple of boxes of documents to start my review  
8 process; and when I was doing that, I found some  
9 documents that talked about dredging. And that seemed  
10 unusual for the site, so I asked to do an Open Records  
11 Act search for additional documents to kind of fill out  
12 the picture of what went on in terms of dredging.

13                       And I found -- or I was able to get a large  
14 volume -- I say a large volume, about 10 inches of  
15 documents that discussed the history of dredging in  
16 terms of permitting and operations, to the extent those  
17 documents still existed for the site.

18           Q.   Okay. And in terms of your review of the  
19 documents, what did those reflect in terms of when the  
20 first dredging in this area was going on?

21           A.   It appeared like the concept or the proposal to  
22 do dredging actually started in 1970. The first  
23 dredging, it appeared, happened about 1976.

24                       MR. REASONER: Can we go, please, to  
25 Exhibit 24?

1           Q.    Was this one of the documents you reviewed,  
2   sir?

3           A.    Yeah.  This is the earliest document that I  
4   looked at that I was just describing.  This is what is  
5   called a subsurface exploration document, which would  
6   determine whether or not it was commercially viable to  
7   do sand dredging at this location.

8                   MR. REASONER:  And if we could scroll down,  
9   please, Jenn.

10          Q.    Does it indicate who asked or paid for this  
11   exploration to be done?

12          A.    Yeah.  It was authorized by Mr. Frank Spata.  
13   He was the owner, at the time, of the land surrounding  
14   the tract purchased by Mr. McGinnes that I described  
15   earlier.

16          Q.    And I believe if we scroll down a bit, it  
17   indicates borings -- there in the second paragraph, it  
18   says borings were taken.  Can you tell us what we're  
19   talking about when we say borings?

20          A.    Yeah.  There were actually eight borings, and  
21   they were 4-inch diameter, nominal.  What that is is  
22   just an auger-type drill that drills down into the soil  
23   and then allows the exploration company to take samples  
24   as a function of depth to determine what kind of  
25   material is below the surface.

1 Q. All right.

2 MR. REASONER: Let's go over to Page 4,  
3 please.

4 Q. What is this diagram depicting, sir?

5 A. Well, this is the location of the borings on  
6 the site. Mr. Spata owned all of this property here  
7 that's kind of outlined (indicating). This is I-10, so  
8 again, this time north is this way (indicating). It is  
9 a bit confusing.

10 But this is the McGinnes tract, this is the  
11 Spata tract, and then these are the boring locations.  
12 There are eight of them, four up here (indicating) and  
13 then four down closer to the McGinnes tract. The San  
14 Jacinto River is meandering through that area right here  
15 (indicating).

16 Q. All right, sir. And then I realize it didn't  
17 exist by this point, but just to orient us, can you show  
18 us where the Houston International Terminal will  
19 ultimately be later? Who operated the Houston  
20 International Terminal?

21 A. Captain Jack Roberts was actually a boat  
22 captain, but he ultimately bought this property from  
23 Mr. Spata. But he developed what is called the Houston  
24 International Terminal. And there was an old dredge  
25 scar -- I say "dredge scar." What that meant was that

1 this area had been dredged sometime probably in the '50s  
2 or '60s. That dredge scar was existing, and he built  
3 his Houston International Terminal right at the end of  
4 that dredge area.

5 Q. If we go back to Page 2 of the document, sir,  
6 does -- do they have a description there -- and I think  
7 it's the last full paragraph -- a description of the  
8 results of the borings?

9 A. They do.

10 Q. And what does that indicate to you, sir?

11 A. Well, the purpose of the exploration was to  
12 determine whether or not there was a potential for  
13 commercial sand recovery; and that's what this paragraph  
14 talks about. And he says there is a sand strata, it's a  
15 gray sand of commercial importance, it ranges from 14 to  
16 33 feet in thickness. It's an average of about 23 feet.  
17 So it's a thick sand strata.

18 But there is a clay and sandy clay  
19 overburden, that's the material above the sand, which  
20 ranges from 7 to 14 feet in depth, with an average depth  
21 of 10 feet. So what that tells us is we have a clay  
22 zone and then a sand zone beneath that, and then down  
23 beneath that they found additional clay. So the sand  
24 deposit was very thick.

25 Q. So when you say overburdened, what does that

1 mean?

2 A. The overburdened is the material that's not  
3 useful for sand -- commercial sand purposes. In this  
4 case, it was clay materials, and it ranged in thickness  
5 from 7 to 14 feet.

6 Q. So you have to get through that to get to the  
7 sand you are trying to mine; is that right?

8 A. Yeah, that's right. You have to remove that in  
9 order to be able to then get to the sand, to move it  
10 onshore by hydraulic dredging.

11 Q. What kind of hydraulic dredging is generally  
12 used to do that?

13 A. Well, for the clay part you would need a  
14 cutterhead because the material is stiff enough to where  
15 you couldn't suck it with just a suction dredge. So it  
16 would be a cutterhead that was used to remove the  
17 overburden. And then depending on whether the sand was  
18 fluid enough, you might be able to convert to a suction  
19 head or you might still have to use a cutterhead. We  
20 don't know precisely how this was done, but it either  
21 used exclusively a cutterhead or a combination  
22 cutterhead and suction head.

23 Q. Fair enough, sir.

24 MR. REASONER: Let's go to Exhibit 1237,  
25 please.

1           Q.    This is, as you see here, sir, a letter from  
2 the department of the Army Corps of Engineers in June of  
3 1976. First, can you tell us what is the Corps of  
4 Engineers?

5           A.    The Army Corps of Engineers is a government  
6 agency that does different types of construction  
7 projects for the government and others.

8           Q.    All right. And what is their involvement in  
9 something like this, where we talk about dredging on or  
10 around a river?

11          A.    The Corps of Engineers has jurisdiction over  
12 all navigable waters. So if you want to put something  
13 in and out of the water or take something out, you need  
14 to go to the Corps to get their permission.

15          Q.    And reference is made here to a -- it's a  
16 letter to Captain Jack Roberts and reference is made to  
17 a permit. Do you see that reference, sir?

18          A.    I do.

19          Q.    And was this the earliest -- the first one you  
20 found that Captain Jack Roberts was trying to obtain?

21          A.    Yes. I found that Captain Roberts actually  
22 acquired the property in 1972, but this is the first  
23 permit application I found that he wished to do some  
24 dredging.

25                   MR. REASONER: And then let's go, if we

1 could, to Exhibit 1240, please, Jenn.

2 Q. This is correspondence from the Texas  
3 Department of Water Resources there in July of 1980;  
4 "Re: Request for Certification, Captain Jack Roberts."  
5 Do you see that, sir?

6 A. Yes.

7 Q. What is the Texas Department of Water  
8 Resources?

9 A. Well, the state agency that was created in 1961  
10 to manage Water Pollution Control in Texas was the Texas  
11 Water Pollution Control Board. The Legislature, over  
12 time, added additional duties to the agency; and each  
13 time they added additional duties, they also changed  
14 their name. So this is, I believe, the third  
15 reincarnation of the former Texas Water Pollution  
16 Control Board, which is now known as the Texas  
17 Commission on Environmental Quality.

18 Q. So that's the TCEQ; is that correct?

19 A. That's correct.

20 Q. And looking here on the first paragraph, what  
21 is the proposal that Captain Roberts has made?

22 A. Well, he's looking for certification to -- from  
23 the Texas Department of Water Resources, which was a  
24 requirement at the time, to do some maintenance dredging  
25 of his boat slip to remove about 1100 cubic yards of



1 material from the boat basin, and they put that spoil  
2 behind an existing bulkhead that he had built.

3 Q. And then scrolling down, does he receive that  
4 approval at that time?

5 A. I recall he did.

6 Q. The next sentence or two there, it says "Will  
7 not cause violation of established Texas Water Board  
8 standards." What does that refer to?

9 A. Well, that's one of the -- one of the standards  
10 of review is that the agency would determine whether or  
11 not there would be a violation of established standards  
12 based upon granting of this permit and based upon them  
13 not having -- based upon them having made the  
14 determination no such violation would occur, the permit  
15 was issued.

16 Q. All right, sir.

17 MR. REASONER: If we could go to the next  
18 page, please.

19 Q. Here, again, is a map in connection with this  
20 correspondence. Is the McGinnes --

21 MR. REASONER: If we could zoom in on that  
22 a little bit, please.

23 Q. Is the McGinnes site there identified?

24 A. Yes, the McGinnes property is shown, you know,  
25 roughly -- it's not a survey, of course, but it's shown

1 handwritten in terms of where the McGinnes site is.  
2 This is Houston International Terminal, or HIT, as it's  
3 called; and here is where Captain Roberts is wanting to  
4 do his dredging behind his -- his little bulkhead. And  
5 this was the property he owned, everything around and  
6 inside of the bend of the San Jacinto River.

7 Q. And based on your review of the history, sir,  
8 what is the first dredging that had significance for the  
9 issues we're talking about here in connection with this  
10 site? When did that take place?

11 A. It appears to me that commercial sand dredging  
12 really wasn't even permitted until the 1990s. And the  
13 first real commercial dredging, although there was some  
14 in '92, '93, the large volume dredging occurred in '96  
15 through about '99.

16 Q. All right. Let's move in that direction, then,  
17 sir. So Exhibit 1247, if you would look at that,  
18 please. This is dated January 31st of 1991; is that  
19 correct?

20 A. Yes. This is a joint public notice between the  
21 Corps of Engineers and now the Texas Water Commission.  
22 That's the next incarnation of the agency.

23 Q. All right. And if we go down to the body of  
24 this document, sir, do you see that it indicates what  
25 Captain Jack is proposing -- well, let me back up. This

1 is a public notice, it says; is that right?

2 A. Right.

3 Q. And what was one of these? What is that?

4 A. The requirement is that the public be informed  
5 of a proposed permit to do this kind of work, to receive  
6 comment, and there are certain agencies that require --  
7 are required to sign off, as it were, on these kinds of  
8 projects. But the public also has a right to comment,  
9 as well.

10 Q. And what is being proposed in this notice, it  
11 describes the dredging that Captain Jack Roberts wants  
12 to do. What is being proposed?

13 A. Well, this kind of goes back to the subsurface  
14 exploration that Mr. Spata contracted for in 1970  
15 because it basically says that: We've got a 184-acre  
16 tract, we want to dredge it to a depth of 33 feet below  
17 low tide level for the entire site, and we believe we  
18 can recover approximately 8.7 million cubic yards of  
19 sand through this hydraulic dredge operation.

20 Q. So you're saying -- 33 feet below the water  
21 line at low tide is the depth involved?

22 A. Mean low tide, yeah. That's basically the  
23 thickness of the sand that was determined to exist under  
24 the Subsurface Exploration Program.

25 Q. All right. And it's 8.7 million cubic yards;

1 is that right?

2 A. That's apparently what they calculated.

3 Q. Now, if we go to Page 3, sir, of the document  
4 in the second full paragraph there, does the first  
5 couple of steps of that paragraph describe this notice  
6 process that's going on?

7 A. Yeah. It talks about the Corps of Engineers is  
8 soliciting comments from interested persons, which  
9 includes local and state and federal agencies and  
10 officials, Indian tribes, other interested parties, in  
11 order to evaluate the impacts of the proposed activity.

12 Q. All right. And as it indicates there, any  
13 comments received will be considered by the Corps of  
14 Engineers to determine whether to issue, modify,  
15 condition, or deny a permit for this proposal.

16 A. Right.

17 Q. Is that consistent with your understanding?

18 A. It is; and that's part of the approval process,  
19 is that they first of all determine whether it can just  
20 be issued without special provisions, whether there  
21 needs to be some modifications or conditions to the  
22 permit or if it needs to be denied, based upon the  
23 review process.

24 Q. And if we could go to Page 5 of the document,  
25 does it show you a list of who received notice of this?

1           A.    Yes, it does.

2           Q.    And if we scroll up, do we see Harris County  
3 receiving notice -- receiving this notice?

4           A.    Yes.  The County Judge of Harris County is one  
5 of the -- one of the persons specifically that was  
6 mailed a notice.

7                       MR. REASONER:  Then if you could scroll  
8 down, please, Jenn.

9           Q.    You see that handwritten -- I'm sorry I don't  
10 have a pointer; but you see handwritten there it says,  
11 "Adjacent property owners."  Who is listed under  
12 "Adjacent Property Owners" there?

13          A.    Well, there are two adjacent property owners  
14 listed.  One is the General Land Office in Austin, Texas  
15 and the other one is the Texas Department of Highways  
16 and Public -- I can't read it.

17          Q.    Transportation?

18          A.    Transportation, T-r-a-n-s.  Good read.  Also in  
19 Austin, Texas.

20          Q.    All right, sir.  Any indication from this  
21 document or anything else you've seen that any of these  
22 defendants received this public notice?

23          A.    No, and these are the only two adjacent  
24 property owners that received notice, apparently.

25          Q.    Now, in your further review of the

1 documentation, were there agencies and organizations  
2 that objected to this permit application?

3 A. Yes. In the file I saw some letters that said,  
4 you know: We need to -- this is a really large project.  
5 We might need to limit it; and we need do something  
6 about mitigation of the harmful effects to the  
7 environment, based upon loss of habitat.

8 Q. Was there any objection to this proposed  
9 dredging by Harris County?

10 A. No, I didn't find any by Harris County.

11 Q. Now, looking at Exhibit No. 26, sir, was this  
12 permit granted?

13 A. Yes, it was. This is the actual permit that  
14 was granted. No. 19284 was the commercial sand dredge  
15 permit. Unlike the previous permit Captain Jack got for  
16 his maintenance activities, this is a different permit  
17 and it's for the commercial work.

18 Q. And if you go to -- I think Page 3 has the date  
19 that it was issued; is that correct?

20 A. Correct. It was issued on the 11th of May,  
21 1992.

22 Q. And going back to the front, how long is this  
23 one in effect?

24 A. This one expires at the end of 1995,  
25 December 31st, 1995.

1           Q.    And if we go to the second page, sir, I believe  
2 you made this point; but just to see it in the document,  
3 I believe it's under -- sorry. I think it's up toward  
4 the top, the section for special conditions.

5           A.    Right. There are special conditions noted, and  
6 there are none that have been indicated.

7           Q.    All right, sir. Let me ask you to look now at  
8 Exhibit No. 1310.

9           A.    Okay.

10          Q.    And this is a letter dated November 5th of '93  
11 to the Army Corps from Parker Lafarge. Do you know who  
12 that is -- that company is?

13          A.    Yes, I do. I don't know if I mentioned it  
14 before, but Parker Brothers -- yeah, I did. Parker  
15 Brothers down in Dickinson was a big yard that operated  
16 a sand and oyster shell operation down there. Parker  
17 Brothers was acquired by Lafarge and became Parker  
18 Lafarge right around '93, as I recall.

19          Q.    If you look down at the bottom of this copy,  
20 they copy Captain Jack Roberts on the letter; is that  
21 right?

22          A.    Right, because they were operating under  
23 Captain Jack's dredging permit.

24          Q.    Do see we a description of some limited  
25 dredging going on out there at that time?

1           A.    Yes.  It said they had done some pilot  
2 dredging, removed approximately 7,800 tons of sand.  So  
3 they did enough to test its commercial competence, if  
4 you will, and removed a small amount by dredging in  
5 1993.

6           Q.    Let me ask you to look now, sir, at  
7 Exhibit 1318, please.

8           A.    Okay.

9           Q.    And this is from Mr. Roberts, Houston  
10 International Terminal; is that correct?

11          A.    Right.  This is dated November 29th of '95.

12          Q.    Okay.

13                   MR. REASONER:  If we could zoom into the  
14 body of that, please?

15          Q.    He's writing the Corp -- the Army Corps of  
16 Engineers; is that correct?

17          A.    Yes, he is.  He's requesting an extension of  
18 his permit.  It's about to expire in a month from when  
19 this letter was written.

20          Q.    What does he say in that regard, just to  
21 summarize?

22          A.    Well, he starts out by saying there is no  
23 activity performed under this permit, which isn't quite  
24 accurate, but it's close.

25          Q.    So there was -- he doesn't say it here, but



1   there was limited activity that had gone on?

2           A.   Right.  And he also says that Parker Lafarge,  
3   who was to do the dredging, closed down the dredging  
4   department and the vice-president was fired.  And so  
5   they're now looking for another contractor.  But in the  
6   meantime, contact with the Galveston Bay Foundation, who  
7   was one of the ones that was concerned about this  
8   project -- and, in fact, part of the issuance of the  
9   dredging project was conditioned ultimately on the  
10  Galveston Bay Foundation participating in doing some  
11  site restoration, planting what they call cord grass and  
12  redeveloping some habitat.

13          Q.   He says, in looking at the last full paragraph,  
14  "The permit expires December 1995 and we respectfully  
15  request that an extension be granted."  Is that correct?

16          A.   Right.

17          Q.   So he's trying to get his permit extended?

18          A.   Yeah.  He wants to renew the permit, the  
19  existing permit, so he can get back in and do sand  
20  dredging.

21          Q.   All right.  And looking now at Exhibit No. 69,  
22  did another notice go out?

23          A.   Right.  This is a notice that went out in April  
24  of '96 from the U. S. Army Corps of Engineers and the  
25  Texas Natural Resources -- Resource Conservation

1 Commission, which is the fifth embodiment of that  
2 agency.

3 Q. Okay. That's another name for what ultimately  
4 became the TCEQ; is that correct?

5 A. Yeah, that would be the next one.

6 Q. Okay. Fair enough. In looking -- we'll go  
7 through this quickly, because we've seen one of them  
8 before now. Going down the page in the project  
9 description, is it -- is it for dredging in this area?

10 A. It is. The project size has been limited.  
11 Rather than 184 acres, he's now only talking about --  
12 this particular part of the project being only  
13 9.25 acres of sand with a depth of 18 feet.

14 MR. REASONER: And could you go to page 7  
15 of this document, please.

16 Q. Do we see again a diagram -- and can you  
17 identify our site in relation, the site we're talking  
18 about in this case in relation?

19 A. Now, on this sketch north is to the top and  
20 here is the HIT, H-I-T terminal is in this area  
21 (indicating). This is the site that we've been talking  
22 about where the sludge was disposed. And we now have  
23 two phases, Phase I and Phase II for this entire  
24 184 acres. Phase I is what I interpret to be the  
25 9 acres he's now talking about dredging, and he's also

1 shown in this particular one some wetlands restoration  
2 as part of that project.

3 Q. All right. So Phase I is right over to the --  
4 the west of the site and Phase II is up above?

5 A. Here is the site again (indicating). It's --  
6 it's not shown very well, but this is the site. And  
7 this is the HIT -- Houston International Terminal site.  
8 So the dredging is to be performed between the two.

9 Q. Okay, sir. Going to Page 11 of this document,  
10 please, do we see whether Harris County got notice of  
11 this?

12 A. Yeah, the County Judge of Harris County here in  
13 Houston did receive a notice.

14 Q. And looking again at the bottom, there is a  
15 section for adjacent property owners, mayor,  
16 postmasters, et cetera. Any indication here or anywhere  
17 else that any of these defendants received this notice,  
18 sir?

19 A. No, they're not listed.

20 Q. And were there parties who filed objections, in  
21 your review of the documents?

22 A. Yes, there were some additional controversy in  
23 the issuance of this permit as well. So there were some  
24 objections.

25 Q. Was any objection filed by Harris County?

1           A.    Not that I've seen, no.

2           Q.    And was this permit granted?

3           A.    It was.

4           Q.    Have you seen, sir, reports from officials who  
5 actually observed the dredging going on under this  
6 permit?

7           A.    Yeah, there was -- some of the residents of the  
8 area were concerned about dredging out in the river. So  
9 they called the Corps of Engineers when they saw  
10 dredgers operating. So there were some Corps of  
11 Engineers' representatives that went out and responded  
12 to those telephone calls to investigate what was going  
13 on.

14          Q.    Let's look at Exhibit 1334, please, sir. And  
15 Paragraph 1, this is a memorandum for the file. In  
16 Paragraph 1 it says, "Corps of Engineers personnel  
17 reported on 7 November '97 that Mega Sand was dredging  
18 sand in the San Jacinto River for commercial sale." Do  
19 you see that?

20          A.    Right. Mega Sand was the new dredging company  
21 that Houston International Terminal and Captain Jack  
22 came up with to do the commercial dredging; and they, in  
23 fact, were on the scene in November of '97 doing  
24 dredging.

25          Q.    And that is who he had gotten involved after

1 Parker Lafarge; is that correct?

2 A. That's right, and that's what this document  
3 reflects.

4 Q. Yes, sir. In looking at the second paragraph  
5 of the document, does it indicate that the permit we  
6 were talking about earlier had been granted?

7 A. It does. It shows kind of the permitting  
8 history under this 19284 number with the parentheticals  
9 01, 02, beginning extensions; and it says now, the third  
10 line from the bottom, that they authorized an extension  
11 of time until the 31st of December, 1999.

12 Q. Let's go now, sir, to 1338, Exhibit 1338. Do  
13 you see that this is another -- a site investigation  
14 sheet?

15 A. Right.

16 Q. And what -- if we go -- the location, the  
17 San Jacinto River and I-10, if we go down, scroll down,  
18 please, what is the date on this one?

19 A. Well, this is an investigation or a site visit,  
20 as it's called. It's dated May 29th of '99, is when  
21 they went out there.

22 MR. REASONER: Then if we could highlight  
23 the first sentence, please, of the summary?

24 Q. That would help you to know where it is,  
25 Summary of Investigation. What does it say there, sir?

1           A.    It says that "A 26 May, 1999 site visit  
2 revealed a dredge spudded down in the San Jacinto River.  
3 The dredge was inactive, but with pipe extending to the  
4 shoreline at Houston International Terminals."

5           Q.    And we've talked about a couple of those  
6 things. The "spudding down," what does that refer to?

7           A.    That's what I talked about earlier, that these  
8 hydraulic rods or poles were actually driven down into  
9 the subgrade to position the dredge so it wouldn't move  
10 during its operation.

11          Q.    And then pipe -- it says "pipe extending to the  
12 shoreline at Houston International Terminal." Do you  
13 see that, sir?

14          A.    Yes.

15                   MR. REASONER: Can we go back to that  
16 diagram, Jenn, the demonstrative showing from the barge  
17 over to the shoreline, if we can do that easily?

18          Q.    Can you explain, based on this description,  
19 what we're talking about there?

20          A.    Sure. As I was talking about the spuds awhile  
21 ago, this is one of the spuds. The terminology, when  
22 they're in place, is that it's spudded down; in other  
23 words, the spuds have been driven. And then the pipe  
24 going from the barge to the -- to the property over at  
25 the Houston International Terminal is what that

1 represents.

2 Q. All right, sir. Have you looked at other  
3 evidence of the impact of the dredging that Captain Jack  
4 Roberts was having done out there on this site?

5 A. Yes, I have.

6 Q. And what have you looked at?

7 A. I have looked at some historical aerial  
8 photography from this time frame to see whether I could  
9 determine what types of impacts the dredging had in the  
10 area.

11 Q. And do you have experience in your work with  
12 working with and evaluating aerial photography?

13 A. Yes. Much of my work deals with historical  
14 events and how things operated over time, and I've used  
15 historical aerial photography as a good way to just  
16 observe what things look like. If we don't have good  
17 documentation or somebody that has knowledge of what  
18 went on, aerial photography is useful. I use that all  
19 the time.

20 Q. I want to take you to a photo that predates  
21 this -- the dredging that you're focused on.

22 MR. REASONER: If we could look at  
23 Defendants' Exhibit 1031, it should be a January 15,  
24 1995, photo. If you wouldn't mind zooming us in on the  
25 site there? Thank you.

1           Q.    Can you tell us, sir, what is notable to you  
2 about this photo as we look at it, in order to compare  
3 it to another one?

4           A.    Well, this is 1995, and there really hasn't  
5 been much dredging, except for that 7800 tons we talked  
6 about in '93. And we see the site is the sludge pond  
7 here, the water pond, and the additional sludge  
8 extension here (indicating), so this is the site we've  
9 been talking about.

10                       Over here is the Houston International  
11 Terminal, and this is Captain Jack's boat slip that he  
12 did the maintenance dredging in and put the sand back  
13 behind the bulkheads. So the area between is what was  
14 being permitted during the '95 to '99 time period for  
15 dredging in this area, and this will be prior to that  
16 dredging having taken place, except for the exploratory  
17 tidal test bore dredging in '93.

18           Q.    And what observation do you make, if any, sir,  
19 about the western portion of the site?

20           A.    Well, the western portion of the site appears  
21 to be intact. You can still see the dikes. You can  
22 still see the sludge, although it has got vegetation  
23 growing over it now, which we talked about earlier was a  
24 characteristic of the sludges. Once they stabilize,  
25 they support vegetative growth.



1           Q.    Let's now compare this to Exhibit 1034, please,  
2   sir, which should be a 2001 photo.

3                   MR. REASONER:   Again, if you could zoom us  
4   into that area, please, Jenn?

5           A.    Maybe move over a little bit farther and look  
6   at the Houston International Terminal.

7           Q.    Can you walk us through what we're looking at  
8   here and what your observations are?

9           A.    Sure.   This, again, is the Houston  
10   International Terminal.   This is Captain Jack's boat  
11   slip.   This is the site that we talked about earlier.  
12   This happens to be a day when the water in the river is  
13   fairly clear, so you can see that the dredge has  
14   basically worked this area over pretty heavily  
15   (indicating).   And in here (indicating) is where the  
16   wetland restoration project is going on.   So you can see  
17   some subsurface soils in that area.

18                   But the big thing you see is some of the  
19   western part of the dike, a big chunk out of the  
20   northwestern corner of the sludge disposal facility is  
21   gone.   And it seems to be -- or it appears to be, from  
22   this photograph, following the contour lines of the  
23   dredging activities.

24                   Additionally, over on the HIT property,  
25   this is where the stuff was transferred, you see lots of

1 piles of sand that have been produced out of the  
2 dredging activity just sometime prior to this.

3 Q. And do you believe, based on your review of  
4 these photographs and this other evidence, that the  
5 dredging activity penetrated the impoundment?

6 A. Absolutely, I do. I think it removed part of  
7 the dike and removed part of the waste.

8 Q. And, sir, let me -- well, let me ask you to  
9 look now at Exhibit 1339, please. If you look --  
10 this is, again, the Corps of Engineers, a letter to  
11 Mr. Roberts from the Corps of Engineers in January of  
12 2003?

13 A. Yes.

14 Q. Do you see that, sir?

15 A. Yes, sir.

16 Q. And does it indicate there whether a request  
17 Mr. Roberts had made in January of 2000 to extend his  
18 permit was approved?

19 A. This talks about the fact that Captain Jack  
20 Roberts had requested that his permit be amended for an  
21 extension of time, and it says here it's approved.

22 Q. And how long -- I guess looking at the second  
23 paragraph -- how long was Captain Jack Roberts' permit  
24 extended to at this time?

25 A. This particular authorization went through

1 December 31st of 2008. It gave them another nine years,  
2 in essence.

3 Q. And this is well after the 2001 photo that  
4 we're looking at here?

5 A. Correct.

6 Q. What -- sir, do you know from looking at the  
7 history who first flagged or brought up the issue that  
8 dredging near this site might not be a good idea?

9 A. Yeah. The Texas Parks & Wildlife is one of the  
10 agencies that reviews these kinds of permits, and at  
11 some point in time they looked at it really closely and  
12 came to a conclusion that maybe this is a problem.

13 Q. Let's look at the correspondence there,  
14 briefly.

15 MR. REASONER: If you could go to  
16 Exhibit 75, please?

17 Q. And looking down at the bottom e-mail, there is  
18 an e-mail from Andy Sipocz. Do you have an  
19 understanding of who Mr. Sipocz is with, from your  
20 further review?

21 A. I have never met Mr. Sipocz. I do know,  
22 though, that he's with Texas Parks & Wildlife, from some  
23 other correspondence I've seen.

24 Q. He's e-mailing here on April 1 of 2005. And  
25 can you read for the jury his observation in that third

1 paragraph in the first sentence?

2 A. He says, "In looking over the more recent data,  
3 I believe more firmly that the recent sand mining was  
4 responsible for the increase in dioxin levels at the  
5 site noted between 1994 and 2002."

6 Q. Is this -- is this time frame that Mr. Sipocz  
7 is focused on here, consistent with the time frame that  
8 you've been talking about?

9 A. It is, exactly. It's bracketed by the time I  
10 focused on.

11 Q. Let's look at what he said a few days later, if  
12 we could, and that's Exhibit 78. Here is Mr. Sipocz  
13 e-mailing, again, a few days later on April 7th of 2005.  
14 Can you look down, sir, to his last paragraph of what  
15 he's communicating to a colleague, and can you just take  
16 us through this last paragraph of what he says, exactly?

17 A. Sure. Mr. Sipocz says also, "Looking at this  
18 Figure 1" -- or "looking at this figure," rather, "I  
19 realized for the first time that the recent sand mining  
20 may have actually dug into a portion of the old pit  
21 site. Look at the northwest tip of the pit and see what  
22 you think. The company actually doing the mining, Mega  
23 Sand, was not the landowner and may have not been  
24 entirely familiar with the property's boundaries. Also,  
25 I wouldn't put it past them to 'get a little extra'

1 while their dredge barge was set in this specific  
2 location. You can tell the mined area's south boundary  
3 at least by the telltale bites taken out of the tidal  
4 flat, which is exposed in this low tide photo."

5 Q. Sir, based on your experience and your analysis  
6 here, how do you react to Mr. Sipozc's conclusions  
7 there?

8 A. Yeah, I probably couldn't have said it any  
9 better. That's the way I viewed it as well, looking at  
10 the photography.

11 Q. If you'll go to Exhibit 939, please, sir?  
12 There's just a couple more I want to walk you through  
13 very quickly. Sir, 939 is a letter from the Texas  
14 Parks & Wildlife Department seven days later, on  
15 April 14th of 2005. Do you see that, sir?

16 A. Yes. I believe this is the dioxin letter that  
17 he was referencing in his e-mails.

18 Q. And who is he writing to there, sir?

19 A. It wasn't him, actually; it was his supervisor,  
20 or someone above his supervisor. He was writing to the  
21 Texas Commission on Environmental Quality, the TCEQ.

22 Q. And moving down, sir, to the second paragraph,  
23 the first sentence, what does it say, sir?

24 A. "TPWD," Texas Parks & Wildlife Department, "has  
25 recently become aware of information that suggests

1 that there are old waste pits in a sandbar in the  
2 San Jacinto River just north of the Interstate  
3 Highway 10, (I-10) bridge."

4 Q. And then if we move to the next page, the top  
5 of the next page, the first sentence, what does the  
6 Texas Department of Parks & Wildlife convey there?

7 A. They're saying that the potential presence of  
8 sediment contamination is an immediate concern, as the  
9 San Jacinto River near the I-10 bridge is very active  
10 with respect to dredging, mining and construction.

11 Q. And is that consistent with your observations  
12 and knowledge?

13 A. Yes, it is. I've driven over that I-10 bridge  
14 many times, and there is a lot of industry right in that  
15 general area, a lot of barge traffic, a lot of  
16 maintenance activities and some construction.

17 Q. And if you go, sir, to Page 12 of this document  
18 that the Texas Department of Parks & Wildlife sends, do  
19 you see their reference to Captain Jack Roberts' permit?

20 A. I see reference to the Houston International  
21 Terminal, which is Captain Jack. He now is in his  
22 fourth amendment of 19824; and at this point, it is  
23 identified as being pending.

24 Q. All right. And what does it note about the  
25 location -- I think the column -- the second column from

1 over in the right is the location column.

2 A. Correct.

3 Q. And what does it say about Captain Jack's  
4 dredging area with respect to location?

5 A. It says, "The location envelopes the suspected  
6 waste pit site."

7 Q. All right, sir. And the date of this letter,  
8 again, is?

9 A. 2005. Let's take a look. April 14th, 2005.

10 Q. All right, sir. And if we look at Defendants'  
11 Exhibit 1368, do you see this is a letter on  
12 December 27th of 2007 to Captain Jack Roberts from the  
13 Corps? And what does it say with respect to his permit  
14 for dredging in the area?

15 A. Well, Captain Jack has asked for another  
16 extension. On October 31st, 2007, he asked to amend his  
17 permit. They've assigned it a different number now, but  
18 it is the same location.

19 Q. All right, sir. And looking down at the  
20 bottom, how long is this extension granted for?

21 A. This authorization was to expire on December  
22 31st of 2013.

23 Q. And I believe you heard the Court's stipulation  
24 talking about the TCEQ participating in a study with  
25 other regulators, and then requesting that the permit be

1     suspended in October of 2008. Do you recall that?

2             A. Yeah. I recall that discussion earlier today.

3             Q. Yes, sir, making the request through the Corps  
4 of Engineers. And then looking at Defendants'  
5 Exhibit 73, when was the permit for Captain Jack  
6 Roberts' dredging ultimately suspended, based on your  
7 research?

8             A. This is a letter dated May 19th of 2009, which  
9 describes Captain Jack Roberts' suspension of that  
10 permit number.

11            Q. All right. So we saw -- we saw the Parks &  
12 Wildlife department letter in 2005, April of 2005, and  
13 then we have the permit suspended in May of 2009. Is  
14 that your understanding of the time line, based on your  
15 review?

16            A. That's my understanding from these documents,  
17 yes.

18            Q. Based on your expertise and your review of the  
19 activities at the site, the photographs, and all of it,  
20 do you have an opinion as to the most likely cause of  
21 any dioxin releases at this site?

22            A. Yes. In my opinion, the cause of the dioxin  
23 released from the pits is the sand dredging. Not only  
24 did the dike and part of the material get exposed and  
25 washed away, it was piled onto the Houston International



1 Terminal site for washing, and then the fine material,  
2 which would have been some of the materials in the  
3 waste, would have been returned to the area around -- in  
4 the San Jacinto River. I believe that, overwhelmingly,  
5 is the largest source of dioxin in the area.

6 Q. And I'll finish where I began, sir: Do you  
7 have any information that any of these defendants were  
8 involved in any of this dredging?

9 A. No, they weren't.

10 Q. Or that they had notice of it?

11 A. They had no notice.

12 MR. REASONER: Thank you for your time,  
13 sir.

14 I pass the witness.

15 THE COURT: Thank you, Mr. Reasoner.

16 Mr. Wotring.

17 MR. WOTRING: Yes, Your Honor. There is a  
18 couple of matters I would like to take up outside the  
19 presence of the jury.

20 THE COURT: Ladies and gentlemen, I'll have  
21 you step out for a moment.

22 (Jury not present)

23 THE COURT: Sir, if you don't mind to step  
24 out of the courtroom.

25 You may be seated.

1 MR. STANFIELD: Your Honor, Dr. Mark Johns  
2 is in the courtroom. Does he need to leave?

3 MR. WOTRING: Probably.

4 THE COURT: Yes, please.

5 (Whereupon both witnesses left the courtroom.)

6 THE COURT: Mr. Wotring.

7 MR. WOTRING: The first issue is, I believe  
8 Dr. Zoch went beyond what he was permitted to say when  
9 he talked about that there was no toxic effect from the  
10 sludge, and described it as being able to grow plants on  
11 top of it and other plant life on top of it. I think  
12 that went beyond what we were permitted to say about the  
13 effects of the sludge.

14 The second larger issue is he testified  
15 numerous times that no permit was required with the  
16 material at the site. And I think he went beyond that  
17 sufficient to now permit us to be able to ask him about  
18 the unredacted version of Exhibit No. 17, because the  
19 last page of that does talk about the need for there to  
20 be a permit if they're going to be releasing water from  
21 this site. And I think he stepped over the lines and we  
22 should be able to show the jury the unredacted portion  
23 of Exhibit No. 17. I don't think it requires us to get  
24 into the southern impoundments.

25 And those are the two main issues that I

1 wanted to address outside the presence of the jury, so I  
2 can get that resolved, one way or another, before I  
3 start cross-examination.

4 THE COURT: Is the issue of the plants  
5 growing on it any different than what we've heard before  
6 with regard to grass grows on it, trees grow on it?

7 MR. WOTRING: It's not. It's the addition  
8 that it doesn't have any toxic effect or however he  
9 phrased it. That's the word, and that's the word I  
10 don't think he should have been permitted to use, and if  
11 he did use, I should now be able to go into some of the  
12 effects of the sludge that it has.

13 MR. CARTER: Judge, I think -- I don't  
14 recall specifically what -- what Mr. Zoch said, but I  
15 think he used the word "phytotoxic," or "not phytotoxic"  
16 or something like that. So that was --

17 THE COURT: Meaning it allows plants to --

18 MR. CARTER: I don't know exactly what that  
19 definition is, but it sure went over my head; but it was  
20 primarily following Exhibit 17, and Exhibit 17  
21 specifically says that plants and grass can grow on it.

22 THE COURT: Let's address the other issue  
23 with regard to the regulations. And what Mr. Wotring is  
24 referring to is that Mr. Zoch stated there were  
25 really -- there really were no regulations in effect

1 back in the '60s. And you were asking him about  
2 disposal of waste at the site. I think Mr. Wotring's  
3 argument is that he was a little broader than that.

4 MR. CARTER: I think my question was pretty  
5 specific, as to whether any regulations regarding  
6 disposal of material and looking at permits dealing with  
7 disposal. And that's what we talked about the other day  
8 when we were talking about disposal versus wastewater  
9 and treatment of wastewater. That was the -- that was  
10 where the line was drawn, and that's where I tried to  
11 stay.

12 THE COURT: I do think that's how  
13 Mr. Carter asked the questions. The answer -- while I  
14 don't think Mr. Zoch was intending to cover those areas  
15 that we're not talking about, I understand your concern  
16 that it sounds broad. So I'm trying to figure out how  
17 we address that, rather than getting into some of those  
18 other issues that are not claims in the case.

19 There are several ways we could do it.  
20 Mr. Carter could ask him -- say, "When I asked you those  
21 questions, we were simply talking about the initial  
22 disposal of the waste into the pit."

23 MR. WOTRING: I think, given the nature of  
24 his answer, I should be able to ask him something to the  
25 effect that, if there had been any wastewater deposited

1 at the site that was to be released into the river at  
2 the time it was in operation, is it your understanding  
3 they would have needed a permit?

4 That is what Exhibit No. 17 says.

5 MR. REASONER: But Mr. Carter didn't ask  
6 about --

7 MR. WOTRING: I appreciate he didn't ask,  
8 but the answer came out that there were no permits  
9 required at the time. And it was broader than just  
10 the --

11 MR. REASONER: I didn't hear Mr. Zoch say  
12 anything about an ability to discharge water into the  
13 river, nor did Mr. Carter -- I mean, the site didn't  
14 work that way, under his testimony.

15 THE COURT: I think it is fair for you to  
16 clarify with him. I think what they're objecting to is  
17 that the way you just said it suggests that they did do  
18 those things and that's not at issue in this case.  
19 So --

20 MR. WOTRING: Well, here is another issue:  
21 They did have to have a permit to discharge from the  
22 plant.

23 MR. CARTER: That's the reason the  
24 wastewater went back to the plant.

25 MR. WOTRING: But he's testified they

1 didn't have to have a permit.

2 MR. REASONER: Which would be relevant to a  
3 lawsuit about the plant; we're not in here about a  
4 lawsuit about the paper mill.

5 MR. WOTRING: I understand the relevance  
6 objection. It's -- the problem is their witness has  
7 made statements from the stand, solicited or  
8 unsolicited, that should be clarified and I should be  
9 permitted to go into it to clarify it.

10 THE COURT: I am okay with you clarifying.  
11 I think it would be one thing if he were violating some  
12 motion in limine and making a statement that's in  
13 violation of a motion in limine. I think what's  
14 happened here, and I understand your concern, is that  
15 someone on the jury could construe it as meaning there  
16 were no regulations at all during that time and no  
17 permits required at all. So I do understand your  
18 concern. I'm trying to figure out how it should be  
19 clarified in a way that's fair to both sides, without  
20 getting into issues that aren't relevant in this case.

21 MR. WOTRING: On behalf of Harris County, I  
22 wouldn't mind a five-minute break while we ponder those  
23 issues.

24 THE COURT: Off the record.

25 (Jury Present)

1 THE COURT: Please be seated.

2 You pay proceed, Mr. Wotring.

3 CROSS-EXAMINATION

4 BY MR. WOTRING:

5 Q. Mr. Zoch, we've met before. I took your  
6 deposition over a couple days, some months ago, correct?

7 A. I remember that.

8 Q. Let me get some idea about the differences  
9 between your opinions here today and Harris County's  
10 position in this case.

11 MR. WOTRING: Let me ask Bryan to put up  
12 Exhibit 662. I'm sorry, could you take that down? The  
13 exhibit is the photograph, Bryan. I'm sorry, 658. If  
14 we can just focus on the photographs that are there.

15 Q. We looked at these pits at your deposition, and  
16 this was the nomenclature -- the naming that we used  
17 during our examination with you, I think?

18 A. I don't recall seeing this particular  
19 photograph.

20 Q. Well, does this look familiar to you of the  
21 picture of the three different pits?

22 A. Yeah, but I wouldn't have circumscribed them  
23 the way it is in that photograph. But I understand what  
24 you are saying. We did talk about A, B and C.

25 Q. We did talk about A, B, and C. That's right.

1 What I want is to get some sense from you is that is A  
2 (indicating), that's the western impoundment we've been  
3 discussing about with counsel?

4 A. Yes, sir.

5 Q. And then the eastern impoundment, why don't you  
6 identify that for us?

7 A. The dike actually came through right here  
8 somewhere (indicating). It's kind of hard to see; but  
9 C, what you have called C, is the outermost part, and  
10 then B is the extension of A, to complete the project  
11 when it was being filled.

12 Q. That's my question. B is the portion of the  
13 eastern impoundment that was completed during MIMC's  
14 time of operation?

15 A. I agree with that, yes.

16 Q. Whether it was built by MIMC or one of their  
17 contractors, I don't think you have an opinion on that?

18 A. I don't. I know Mr. McGinnes, as trustee,  
19 owned the site. It may have been done under his  
20 contracting. I really don't know.

21 Q. But, in any event, Pit B on this particular  
22 exhibit is the pit that was added to the eastern  
23 impoundment to contain storage of sludge?

24 A. Yes, I agree with that.

25 Q. So at the end of the operation, whenever that



1 was, there would have been sludge waste material in Pit  
2 B?

3 A. I agree with that.

4 Q. All right. And the difference between you and  
5 Dr. Pardue, I think, is that you don't believe there was  
6 any waste material in Pit C, and he believes that that  
7 portion was also full?

8 A. That's what he said, and I disagree with that.

9 Q. You disagree with that? Okay.

10 A. Correct.

11 MR. WOTRING: I would ask that we pull up  
12 the board of directors minutes of Exhibit No. 143.

13 Q. And you've seen these before. These are the  
14 August 19th, 1968, board of directors minutes for MIMC?

15 A. I recall seeing this document.

16 Q. We've talked about this?

17 MR. WOTRING: If we can go to the last  
18 page, I'm sorry, the page before that?

19 Q. And you remember seeing these particular board  
20 minutes?

21 A. Yes, sir, I do.

22 MR. WOTRING: Bryan, if you could go up to  
23 the top of that paragraph.

24 Q. And this is one -- I don't want to belabor it  
25 too much, but it says "Discussion then turned to certain

1 real estate owned by the Corporation on the San Jacinto  
2 River, which was used during fiscal 1966 and part of  
3 fiscal 1967 as a dump for waste material hauled by the  
4 Corporation."

5                   And then we go down to the sentence here.  
6 "It was pointed out that the property was completely  
7 filled with waste materials and could no longer serve as  
8 a dumpsite."

9           A.    Yes.

10          Q.    And if I'm correct, your reading of that is  
11 that doesn't mean that all the pits were filled with  
12 waste material, that means that the portions you've  
13 talked about, Pit A and Pit B were filled, but not Pit  
14 C?

15          A.    Well, yes, that is a good way to put it. The  
16 reason is because having filled Pits A and B, there was  
17 no place else to put waste and still have a de-watering  
18 pit, which was Pit C. That's why it was said here that  
19 the pits were filled.

20          Q.    The point of difference between you and  
21 Dr. Pardue, you and Harris County's position, is what  
22 the phrase "completely filled with waste materials"  
23 means in that particular context?

24          A.    I guess you could say that.

25          Q.    And if "completely filled with waste materials"

1 means the entire property was completely filled with  
2 waste materials, then that would mean that all three of  
3 the pits, A, B and C, were filled with the waste  
4 material, not just the water runoff?

5 A. I don't know if I would agree with that or not.  
6 You know, as I said, this is a system; it's not just a  
7 series of pits that you just sequentially fill one after  
8 another. The issue is we have a de-watering area and  
9 then we have a water storage area. So I think the pits  
10 being filled are the A and B pits, which are the waste  
11 disposal sites.

12 Q. Now, you've been shown the deed from the Spatas  
13 to Virgil McGinnes, and you've also seen this language  
14 about, in the board of directors minutes, that the  
15 company is saying it owns the real estate site?

16 A. I see that's what it says in these minutes,  
17 yes.

18 Q. Are you taking a position on that particular  
19 issue as an expert in this case, or are you just noting  
20 the differences in the documents?

21 MS. GRAY: Objection, to the extent it  
22 calls for a legal conclusion.

23 THE COURT: I assume he's not going to be  
24 taken as giving a legal conclusion.

25 MR. WOTRING: Then I think I'll move on

1 with my questions from that.

2 If we could go back to the last exhibit,  
3 which is the photo, Exhibit 658, and just the photo  
4 itself.

5 Q. (By Mr. Wotring) Would you agree with me,  
6 Mr. Zoch, that if we looked through the aerial  
7 photographs after 1966, we start to see both Pit B --  
8 what is designated here as Pit B and Pit C start to go  
9 underwater?

10 A. I would agree with that. In certain -- in  
11 certain photographs, that's the case.

12 Q. "Certain photographs that's the case." I  
13 believe you and I talked about the survey that was done  
14 for this site, reflecting that the -- the -- well,  
15 reflecting that portions of the impoundments were  
16 submerged under the water or inundated. Do you remember  
17 talking about that?

18 A. I remember talking about that survey, I think  
19 at mean high tide. Quick question, counsel: Do you  
20 know what date this is?

21 Q. When that photo is taken? I think we can  
22 scroll back and see what date that was.

23 A. I'm trying figure out what I'm seeing here.

24 Q. It's February 15th, 1973. I've got a copy of  
25 the original exhibit, if you'd like to see it?

1           A.    Yes.  I haven't seen this before.

2           Q.    I believe it was an exhibit at your deposition.

3           A.    It says "Zoch", but I don't recall this.  I'm  
4 sure I haven't seen this before.  73?  Okay.  Got it.

5           Q.    Do you remember that after the date of this --  
6 these -- well, after 1973, we do see aerial photographs  
7 with Pits B and C inundated with the San Jacinto River?

8           A.    At least partially, yes.

9           Q.    Now, if we have waste material in Pit B and  
10 it's underneath the surface of the San Jacinto River,  
11 it's your opinion that the consistency of the material  
12 inside Pit B would not break apart or come apart, even  
13 though it's inundated by the San Jacinto River?

14          A.    Yes.  My opinion is that this material gets so  
15 hard and forms a crust, that even if it's inundated, the  
16 action of the currents, the flood waters or tidal action  
17 are not sufficient to cause erosion or any significant  
18 loss due to erosion on the surface of the waste.

19          Q.    And when we talked before, I believe you hadn't  
20 seen anything specifically on the tensile strength with  
21 respect to the material inside the impoundments?

22          A.    That's correct, I haven't seen any data on  
23 tensile strength.

24          Q.    And we did have a discussion about -- that  
25 there are measurement techniques you can use to

1 determine the hardness of paper mill sludge in the  
2 impoundments; but you didn't have any of those specific  
3 readings for your opinions in this case?

4 A. Well, let me go back to your last question. I  
5 don't have numerical values for tensile strength. I do  
6 have qualitative data that would tell me what the  
7 tensile strength is, based upon the fact that a shear  
8 wall will stand. So there is some qualitative data that  
9 I can rely on, which is what I did; but you are right, I  
10 don't have numerical values.

11 Ask your other question again. I'm sorry  
12 to interrupt.

13 Q. My other question is, qualitatively, when you  
14 and I discussed it, we had a discussion about what this  
15 material was, based upon the State Department of Health  
16 made memo and that paragraph about the consistency of  
17 cardboard. Do you remember this?

18 A. I remember that discussion.

19 Q. Well, you and I had a discussion about that and  
20 we tried -- well, I tried to get some idea about your  
21 understanding of the physical characteristics of the  
22 paper mill sludge. And we had a discussion, and I  
23 believe that your opinion is that the physical  
24 characteristics of the sludge is that it's somewhere  
25 between cardboard and concrete, and that it would not

1 break apart if you put it underneath the waters of the  
2 San Jacinto River.

3 A. Well, as you recall, counselor, there was a lot  
4 more pieces to my opinion than that. I recall your  
5 analogy of concrete and cardboard. That's not what I  
6 was saying, though. I was saying it might have a  
7 physical appearance of cardboard. That's not what it  
8 was, and I told the jury that awhile ago.

9 What it was was a combination of fibers and  
10 inorganic materials and it got very hard. I think we  
11 went over all the characteristics from a qualitative  
12 standpoint that would have said it's definitely not  
13 cardboard.

14 Q. And if -- we talked about if it were not just a  
15 cheap grade of cardboard, right? That this were not  
16 just a cheap grade of cardboard but, in fact, a  
17 cardboard box and you placed it under the waters of the  
18 San Jacinto River in these pits in this environment,  
19 that you didn't have an opinion about how long an  
20 engineered cardboard box would remain intact if we put  
21 it in that environment? Do you remember that  
22 discussion?

23 A. Yeah, I think I do. And I think I said it  
24 would depend on, you know, what the nature of the  
25 cardboard was because there is all kinds of cardboard,

1 as well. But that's not really relevant to this case,  
2 as far as I'm concerned.

3 Q. Now, you looked at some dredge documents that  
4 we went through with counsel for -- for Waste Management  
5 of Texas. I'm assuming you remember those documents?

6 A. Oh, yes.

7 Q. And it's your opinion that there might have  
8 been some dredging in the '70s, but the dredging that  
9 affected these impoundments was in the '90s?

10 A. I would agree with that, yes, sir.

11 Q. We talked about that. And if the -- if the  
12 impoundments were under the mean high tide or inundated,  
13 as reflected in the survey, that would have taken -- and  
14 that survey was done on June 30th of 1989 -- that would  
15 have taken place prior to the dredging that you've  
16 talked about that affected the integrity of the  
17 impoundments? Chronologically, that is correct?

18 A. I don't know if you're giving me a hypothetical  
19 or not; but I guess if all those things are right, I  
20 would have to agree with you.

21 Q. Let me show you the survey. I think this is  
22 Exhibit No. 1005, and we put it up on the screen. And  
23 you've seen this before?

24 A. Yes. I have seen it in this courtroom before.

25 Q. You've seen it in this courtroom before. Have



1 you seen it before?

2 A. I don't think I have seen it before that.

3 Q. So the first time you saw this survey,  
4 Exhibit 1005, was when you were observing the testimony  
5 of, I assume, Dr. Pardue?

6 A. Dr. Pardue, yes, sir.

7 Q. Did you also sit in on Dr. Bedient's testimony?

8 A. No, sir.

9 Q. So you saw it with Dr. Pardue. Well, if you  
10 assume with me, and I think this is the record and his  
11 testimony, that the date on this survey --

12 MR. WOTRING: If we could blow up one of  
13 these portions really big --

14 Q. -- if the date on that is through June 1989 --  
15 do you see in the first sentence?

16 A. Mean high tide times survey, yes, it does say  
17 through June '89.

18 Q. And if that was the date of the survey, through  
19 June of 1989, then that date is prior to the date of the  
20 dredging that you say affected the impoundment, correct?

21 A. Yeah. I believe I said that I believe that  
22 dredging had affected the impoundment in the '90s.

23 Q. And the dredging that affected the impoundments  
24 in the 1990s, I couldn't tell, but it seemed to me what  
25 you were saying is it affected the western most

1 impoundment or Pit A that we talked about?

2 A. Right, that was the primary area that it  
3 affected. The dredging actually affected some water  
4 flow across the eastern side, too; but the primary bites  
5 taken out of the impoundment were on the west and  
6 northwestern side. I believe that was the primary cause  
7 of there being distribution of pit waste into the  
8 vicinity.

9 Q. So one of your opinions is that as a result of  
10 the dredging that took place in the 1990s, dioxin  
11 containing paper mill waste got out into the San Jacinto  
12 River?

13 A. Right, into the river directly and also into  
14 the river by virtue of the fact that it went to the  
15 Houston International Terminal and then flowed back into  
16 the area.

17 Q. They washed it back in?

18 A. Yes, sir.

19 Q. And you looked at the TMDL data that was  
20 studied in looking at your examination of materials in  
21 this case. Do you remember that?

22 A. I looked at it, not in great detail. I was  
23 looking for sources of dioxin from the TMDL study, not  
24 so much the data itself.

25 Q. And will you agree with me that the TMDL study

1 reached the conclusion that the area of the San Jacinto  
2 River waste pit is a major source of dioxin in the  
3 San Jacinto River?

4 MS. GRAY: Objection, Your Honor. May we  
5 approach?

6 THE COURT: Yes.

7 (Whereupon, after a bench discussion  
8 outside the presence of the reporter and the jury, the  
9 following proceedings were had:)

10 THE COURT: Please be seated.

11 You may proceed, Mr. Wotring.

12 MR. WOTRING: Thank you, Your Honor.

13 Q. (By Mr. Wotring) You are aware that by 1985  
14 the EPA had designated dioxin as a hazardous substance,  
15 correct?

16 A. Yes. I believe that that's about the time that  
17 dioxin was discovered at Superfund sites.

18 Q. Then from 1985 until about 1988, that's when  
19 the 5-mill study took place?

20 A. Yes, through 1998.

21 Q. And as a result of the 1985 mill study, it was  
22 determined by the EPA and the other participating  
23 companies that the -- the waste discharges, the water  
24 and the sludge and the other effluent from paper mills,  
25 contained dioxin?

1           A.    Some of them, at least, did, yes.

2           Q.    And the sludge at that time from -- from paper  
3 mills contained dioxin in it for kraft --

4           A.    I believe it's kraft --

5                   COURT REPORTER:  "For kraft --"

6                   MR. WOTRING:  We were talking at the same  
7 time?

8           Q.    (By Mr. Wotring)  I'll ask a better question.  
9 As a result of the 5-mill study, the participants in the  
10 five-mill study and the EPA learned that there was  
11 dioxin in the sludge from kraft paper mills?

12          A.    From bleached kraft paper mills, that's  
13 correct.  There was still some disparity at that point  
14 in terms of what the magnitude was, but they at least  
15 detected it.

16          Q.    Right.  And I don't know -- did you hear the  
17 testimony or read the testimony yesterday from  
18 International Paper's corporate representative --

19          A.    No, I didn't.

20          Q.    -- about this issue?

21          A.    I did not.

22          Q.    Okay.

23          A.    Mr. Golemon, you are speaking of?

24          Q.    No, one of the others.  Let me ask you a  
25 question:  Do you know whether or not one of the

1 Champion mills was part of the 5-mill study?

2 A. Oh, I do not.

3 Q. Then after the 5-mill study from '85 to '88  
4 roughly, there was another more extensive study done by  
5 the EPA with the industry about dioxin in the effluent  
6 from paper mills?

7 A. Yes, sir. That's the 104-mill study.

8 Q. The 104-mill study. And we're speaking in very  
9 gross -- large terms. That confirmed that there was  
10 dioxin in sludge from kraft paper mills across a broader  
11 section of the industry?

12 A. Yes. And I believe what they determined from  
13 that study was, depending upon the process that was  
14 used, there could be more or less dioxin formed in the  
15 process and it might wind up in one or more locations.

16 Q. And I think we agreed that after the 5-mill  
17 study, Champion would have been on notice that its  
18 wastepaper sludge from the kraft -- bleached kraft  
19 process would have had dioxin in it?

20 A. It could have, at least, yes.

21 Q. But you're not of the opinion -- well, I'll  
22 move on because we haven't talked about that.

23 You've seen Dr. Quebedeaux's letters first  
24 to Burns Engineering and then a later one to MIMC,  
25 copying Champion?

1           A.    Yeah.  I don't think we looked at the latter  
2 one yet today, but I do recall one.

3           Q.    I think the jury has looked at that.

4           A.    Okay.

5           Q.    If you saw Dr. Pardue, you know we talked about  
6 that letter.

7           A.    I kind of remember that letter.

8           Q.    That's the December 28th letter?

9           A.    Yes, sir.

10          Q.    All of them -- in all of those letters,  
11 Dr. Quebedeaux approves the disposal operation on the  
12 condition that the wastewater does not get out into the  
13 river, correct?

14          A.    Yeah.  That was his first letter, or first two  
15 letters.

16          Q.    His first two letters.  Do you want to look at  
17 the third letter and confirm that?

18          A.    Yeah, we probably better take a look at that  
19 because I haven't looked at it lately.

20          Q.    That letter is -- I'll have Brian pull up that  
21 exhibit.  I do think that one -- one comment you made  
22 today is that you read into those letters that  
23 Dr. Quebedeaux's instruction -- I have a couple of them  
24 here.  This is the June 11th, 1965, letter.  You're  
25 familiar with this one?

1           A.    Yes, sir.  I think I read from that one earlier  
2 today.

3           Q.    And your view of this letter is that his  
4 instruction not to let the liquid waste get into the  
5 river was limited to the time period during the  
6 operation?  Is that how you read this letter?

7           A.    That is what it says, yes.

8           Q.    Where do you see that it says that?

9           A.    "Your waste handling operation should be done  
10 in a manner which would not allow any liquid waste to  
11 leave the property."

12                        So that's what I'm saying.  He's saying  
13 that, you know, when you are doing this process out  
14 there, de-watering the sludge and recovering the water,  
15 when you are doing all those things, you shouldn't let  
16 any liquid waste leave the property.

17           Q.    Right.  And your view of this letter is that is  
18 while the waste handling operation is taking place and  
19 doesn't provide any restriction on them after that  
20 period of time?

21           A.    That's right.  That's not what the letter says.

22           Q.    Okay.  And you have the same view of the letter  
23 for May and for December, correct?

24           A.    Yes.  It's basically the same letters.  It's  
25 just one of them clarified the location.

1           Q.    So your view of Dr. Quebedeaux's letters is  
2   that they would -- he didn't have any problem with them  
3   letting liquid waste leave the site after the operation  
4   is terminated?

5           A.    Well, knowing Dr. Quebedeaux, I don't think he  
6   would have wanted liquid waste to leave the site at any  
7   time; but his admonition is "By virtue of your  
8   production operations, don't let any liquid waste  
9   leave."

10          Q.    I think when we talked about this at your  
11   deposition, you were of the opinion that it was the  
12   intention that there be no releases from the  
13   impoundments of contaminated liquid waste?

14          A.    Right. That was the distinction because I  
15   think the December letter was of concern as to what it  
16   was. There was a couple of -- a couple of opinions on  
17   what it was.

18          Q.    Yes.

19          A.    One of them was it was clean water.

20          Q.    And you're compensated for your work on this  
21   case, correct?

22          A.    Oh, yes. Yes, sir.

23          Q.    You earn \$250 an hour?

24          A.    Yes, that's what I'm paid.

25          Q.    And at the time of your deposition you had



1 spent approximately 300 hours on this matter?

2 A. Yes.

3 Q. Do you have any idea about your total amount of  
4 time spent on this case prior to today?

5 A. Not counting this week, you mean?

6 Q. And including and counting this week.

7 A. It's somewhat over 400 hours now.

8 Q. Somewhat over 400 hours?

9 A. Yes, sir.

10 Q. And so if we're doing our math correctly,  
11 perhaps you can do the math correctly, what is the total  
12 amount of your fees that you have generated for your  
13 work on this case?

14 A. Over the last couple of years it would have  
15 amounted to over a hundred thousand dollars.

16 Q. Okay. Let me look at some of the dredging  
17 documents that you referred to with counsel.

18 MR. WOTRING: If I can pull up Exhibit  
19 No. 1031.

20 Q. This is the 1995 photograph, correct?

21 A. Yes, sir.

22 Q. And am I correct in thinking that in this 1995  
23 photo --

24 MR. WOTRING: Brian, would you mind trying  
25 to do a more close-up of the site?

1           Q.    Am I correct that you don't believe that there  
2 is -- has been any dredging impacting the site as of  
3 this date in 1995?

4           A.    I don't think you can see it visually if there  
5 has been.

6           Q.    Do you believe that you can see that the  
7 eastern impoundment is underwater?

8           A.    There is definitely water within it, yes.

9           Q.    There is definitely water within it, both what  
10 we've been calling Pit B and Pit C?

11          A.    I can't really tell on B. There is a dark spot  
12 there.

13          Q.    Okay.

14          A.    C definitely looks to me like it has water in  
15 it.

16          Q.    Can we move on to Exhibit 1034 that you  
17 reviewed with counsel? This is the 2001 photo.

18          A.    This is the one I looked at earlier, yes.

19          Q.    Do you believe you see impact of dredging on  
20 this particular photo?

21          A.    Absolutely.

22          Q.    I think you've reviewed that before. Do you  
23 believe that the dredging impact is in the northwest  
24 corner?

25          A.    Well, sort of the western side of the dike and

1 then the northwest -- this used to be a diked area  
2 containing waste up there and it's gone. So, yes, I do  
3 believe the dredging impacted it.

4 Q. Okay. Now, the eastern two impoundments, as we  
5 see in this picture from 2001, appears to be submerged  
6 beneath the San Jacinto River? Would you agree with me  
7 on that?

8 A. There appears to be some submergence, yes. The  
9 dike is visible, but not all above water.

10 Q. Okay. And Pit B also seems to be underneath  
11 the waters of the San Jacinto River. Would you agree  
12 with me on that?

13 A. It's not as clear; but I think at least parts  
14 of it are, yes.

15 Q. If we go to Exhibit No. 1339, and I think -- if  
16 we could go to Page 10 of this particular exhibit -- I  
17 may be on the wrong exhibit and may have to find this  
18 later.

19 I may be misremembering it, but I believe  
20 you only identified one instance in which there was  
21 actual dredging taking place near the impoundments?

22 A. No. There were I think at least three.

23 Q. Well, there is the tidal study that was done?

24 A. Right.

25 Q. And can we be correct -- the tidal study was

1 done outside the impoundments?

2 A. Yeah, we don't really know where it was. But I  
3 think it was in the Phase I area, but I'm not sure  
4 precisely where.

5 Q. Okay.

6 A. I don't believe it was in the pits, though.

7 Q. And then the dredging that was done by Mega  
8 Sand was done in the 1996/1997 time period, correct?

9 A. Yeah. The two inspections were in '97 and '99.

10 Q. And those are the dredging that you think  
11 impacted the western impoundment?

12 A. Yes.

13 Q. I think you clarified this, but you didn't see  
14 any effort by any of the defendants to do anything with  
15 respect to that dredging?

16 A. I didn't see any indication the defendants knew  
17 about it.

18 Q. And have you seen any indication that there was  
19 any notice put on the land where the pits are located  
20 about the existence of the pits prior to there being  
21 dredging in and around the area?

22 A. A deed notice, you mean?

23 Q. I'm not talking about a deed notice. I'm  
24 talking about a physical notice on the land, itself.

25 A. A sign, you mean?

1 Q. That's correct.

2 A. I don't know. I can't see that from the aerial  
3 photography.

4 Q. And you haven't seen any other information  
5 about there being a sign or fencing or anything else  
6 indicating a presence of pits out there during the  
7 1990s?

8 A. I don't think I have seen any documentation of  
9 the site in the 1990s.

10 MR. WOTRING: If we can pull up Exhibit  
11 No. 939.

12 Q. I think this is another one you looked at.  
13 This is a Texas Parks & Wildlife letter --

14 MR. REASONER: Counsel, if we could use the  
15 other version.

16 MR. WOTRING: Yes, we'll get the other  
17 version to put up there.

18 Q. (By Mr. Wotring) That's the Texas Parks &  
19 Wildlife letter that you reviewed with counsel, and I  
20 can give you a hard copy of that.

21 MR. REASONER: Earnest, Jenn can pull up  
22 the document.

23 A. Yeah, I guess those are the documents that I  
24 have seen in the '90s, were these dredging-type  
25 documents.

1           Q.    (By Mr. Wotring)  And that document is the  
2 document that you discussed about notification about  
3 dredging going on in and around the site affecting the  
4 pits, correct?

5           A.    Yes.  The Texas Parks & Wildlife was putting  
6 the TCEQ on notice that this was going on and they were  
7 concerned about it.

8           Q.    Okay.  And by this point in time, if the survey  
9 is correct, the pits have been inundated with the --  
10 have been inundated with the water of the San Jacinto  
11 River for 15 years?

12          A.    If the survey is correct, at least some of  
13 those times it would have been, yes.

14          Q.    So, Mr. Zoch, to be clear about your opinions  
15 in this case, your opinions are that -- you're not  
16 taking the opinion there were no releases of dioxin from  
17 the paper mill sludge contained in the impoundments,  
18 correct?  You are taking the position that those  
19 occurred primarily or overwhelmingly as a result of the  
20 dredging that took place in the 1990s?

21          A.    That's accurate.  That's what my opinion is.

22          Q.    Okay.  So I take it -- and, you know, words  
23 like "primarily" or "overwhelmingly" for a lawyer almost  
24 require a follow-up.  Do I take it that you are also of  
25 the opinion that prior to the dredging in the 1990s,

1   there would have been some releases of dioxin from the  
2   paper mill sludge from impoundments, or the pits we've  
3   been calling B and C; or do you think that's not a  
4   possibility?

5       A.   Well, you know, I segregate that between the  
6   source of those kind of releases; and I said earlier  
7   that I don't believe there was any erosion that would  
8   have been caused by the fact that these pits were  
9   partially underwater from time to time and, therefore,  
10   were subject to currents from either tide or the river.  
11   I don't believe erosion would have been a mechanism of  
12   transport. I know others in this case are going to talk  
13   about other potential mechanisms. I don't have an  
14   opinion on that right now.

15       Q.   So you leave that to others about other  
16   potential mechanisms aside from erosion and dredging?

17       A.   Yes, sir.

18               MR. WOTRING: Mr. Zoch, that is all the  
19   questions I have.

20               THE WITNESS: Thank you.

21               THE COURT: Mr. Carter.

22               MR. CARTER: Judge, may I approach for just  
23   a minute?

24               THE COURT: Yes.

25               (After a bench discussion outside the

1 hearing of the reporter and jury, the following  
2 proceedings were had:)

3 REDIRECT EXAMINATION

4 QUESTIONS BY MR. CARTER:

5 Q. Mr. Zoch, you were asked questions about the  
6 letters that Dr. Quebedeaux wrote in May and June and  
7 then there was one in December of 1965, I believe.  
8 Dr. Quebedeaux knew about this site, obviously?

9 A. Absolutely.

10 Q. And the Texas State Health Department report  
11 was disseminated?

12 A. Yes.

13 Q. Did you see any documentation from  
14 Dr. Quebedeaux after April the 22nd of 1966 to the  
15 contractor that said, "As a result of this site, you  
16 need to -- you need to make sure that no releases come  
17 from this site"?

18 A. No, I haven't.

19 Q. In other words, the letters that were written  
20 during the time of the operation were addressing the  
21 operation?

22 A. That's correct, and that's why my opinion is it  
23 was addressing the operation.

24 Q. And there wasn't any other correspondence to  
25 the contractor that said -- in May of '66 that said --



1 or even months after that that said to the contractor,  
2 "Make sure you don't have a release," any letter from  
3 Dr. Quebedeaux about that?

4 A. No, I have seen no such letter.

5 Q. I asked you some questions on direct  
6 examination concerning the necessity for permits  
7 concerning waste disposal during '65 and '66. Were  
8 there any permits required for waste disposal?

9 A. No. And I was referring to solid waste  
10 disposal, the kind of sludge that we're talking about in  
11 this case. There were no such disposal permits  
12 required.

13 MR. CARTER: Your Honor, I pass the  
14 witness. Thank you.

15 MS. GRAY: No further questions, Your  
16 Honor.

17 MR. REASONER: I don't have anything  
18 further.

19 MR. WOTRING: I do have a couple of further  
20 questions. Then I need to approach the bench.

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. WOTRING:

23 Q. Can we agree that none of the dredging permits  
24 that you've discussed with counsel were for dredging  
25 directly into the site, itself?

1           A.    That's a good question. I have never seen the  
2 dredging permit that precisely called out the  
3 boundaries. It talked about the property owned by at  
4 that point Captain Jack, but I have never seen the  
5 survey.

6                   MR. WOTRING: That's the only question I  
7 have, Your Honor.

8                   THE COURT: Thank you.

9                   MR. CARTER: Nothing further, Your Honor.

10                  THE COURT: You may step down. You are  
11 excused, sir.

12                  THE WITNESS: Thank you, Your Honor.

13                  THE COURT: Counsel approach for just a  
14 minute.

15                         (After a bench discussion outside the  
16 hearing of the reporter and jury, the following  
17 proceedings were had:)

18                   THE COURT: All right, ladies and  
19 gentlemen, we're going to go ahead and recess for the  
20 day. We've got some other work to do. So we're going  
21 to send you-all home. Remember tomorrow morning we're  
22 starting at 10:30. Y'all have a good evening.

23                         (Whereupon, the following proceedings were  
24 outside the presence of the jury:)

25                   THE COURT: Let's go on the record.

1                   MR. REASONER: In discussion with  
2 counsel -- Exhibit 939, which we used with a prior  
3 witness, I discussed with counsel before, it had been  
4 redacted but I noted two places on the front page where  
5 it discussed tissue samples and significant threat to  
6 aquatic resources and human health.

7                   Both Mr. Bedient and Mr. Wotring preserved  
8 their objection to that being redacted but agreed to let  
9 me use that in redacted form. So we have a new version  
10 of Exhibit 939 that has these additional redactions that  
11 I used with this witness --

12                  THE COURT: Okay.

13                  MR. REASONER: -- and they've preserved  
14 their objections to those redactions. Mr. Benedict and  
15 Mr. Wotring preserved those objections. I don't know  
16 what Mr. Bedient's view is on the issue. Dr. -- excuse  
17 me, Dr. Bedient. Thank you. That's all I have.

18                  MS. GRAY: Your Honor, I just have one  
19 thing for the record. For purposes of the objection  
20 that was made, do you mind putting on the record that --

21                  THE COURT: Yes, I sustained that objection  
22 with regard to the TMDL conclusion.

23                  I sustained the objection that Ms. Gray  
24 made when it came up with Mr. Zoch to the question with  
25 regard to the TMDL conclusion only.

1 Off the record.

2 (Whereupon, after a discussion off the  
3 record, the following proceedings were had:)

4 THE COURT: Back on the record.

5 MR. CARTER: Judge, I would like to make an  
6 offer to the court of two exhibits. The first is  
7 Defendants' Exhibit 147-A, which is the July 1, 1966  
8 contract between Champion and McGinnes Industrial  
9 Maintenance Corporation. It's the follow-on contract  
10 that has the language in it which deals with Paragraph  
11 9, the amendment; and it says that this supersedes and  
12 replaces a previous agreement between the parties dated  
13 April 29, 1965.

14 THE COURT: You are offering that to the  
15 court only for support of your position that the other  
16 contract expired?

17 MR. CARTER: Expired or terminated --

18 THE COURT: Terminated.

19 MR. CARTER: -- in July 1, 1966.

20 THE COURT: Okay.

21 MR. CARTER: And then I offer Defendants'  
22 Exhibit 1515-A, which is a further amended agreement  
23 between Champion Papers and McGinnes Industrial  
24 Maintenance Corporation dated February 27, 1967, which  
25 addresses and amends -- makes some amendments to the

1 1966 agreement, 147-A.

2 THE COURT: It's my understanding that  
3 Mr. Carter is offering those two exhibits to the court  
4 only to support his legal argument that the previous  
5 contract expired July 1st, 1966.

6 MR. CARTER: That's right. And that  
7 contract interpretation is a legal issue for the court  
8 rather than for the jury.

9 MR. WOTRING: And Harris County does object  
10 under these circumstances because the evidence in front  
11 of the jury is that there was only one site and,  
12 therefore, in the existing contract it only referred to  
13 this site and not to some other site.

14 THE COURT: But does that change the legal  
15 termination date?

16 MR. WOTRING: Harris County would argue  
17 that the evidence in front of the jury is the evidence  
18 that the Court should consider in interpreting the  
19 contract in these circumstances.

20 MR. CARTER: That would be parol evidence,  
21 and that would be not appropriate for any parol  
22 evidence. The Court can look at the contract in  
23 evidence, April 27, 1965, and take the two additional  
24 agreements and make her determination. There is no --  
25 the parties to the contract agree that the contract

1 terminated in July -- on July 1, 1966, by virtue of the  
2 amendment. So there is no ambiguity. There is no issue  
3 of ambiguity. It is simply a matter of contract  
4 interpretation.

5 MR. WOTRING: Can we go off for just a  
6 second?

7 THE COURT: Yes.

8 (Whereupon, after a discussion off the  
9 record, court was adjourned:)

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1 THE STATE OF TEXAS  
2 COUNTY OF HARRIS

3 I, Kimberly Kidd, Official Court Reporter  
4 in and for the 295th District Court of Harris County,  
5 State of Texas, do hereby certify that the above and  
6 foregoing contains a true and correct daily copy  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above-styled and numbered cause, all of  
11 which occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's  
14 Record of the proceedings truly and correctly reflects  
15 the exhibits, if any, admitted, tendered in an offer of  
16 proof or offered into evidence.

17 WITNESS my hand this the 30th day of  
18 October, 2014.

19  
20  
21 /s/ Kimberly Kidd  
22 Kimberly Kidd, Texas CSR No. 2437  
23 Expiration Date: 12/31/15  
24 Official Court Reporter  
25 295th District Court  
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\$	1			
\$250 [1] - 200:23	1 [26] - 1:1, 10:22, 10:23, 11:11, 33:4, 35:23, 37:7, 43:3, 43:5, 48:23, 49:18, 58:16, 61:10, 67:23, 68:4, 69:17, 69:24, 70:3, 164:15, 164:16, 171:24, 172:18, 212:7, 212:19, 214:1	158:20, 198:24 12 [16] - 12:23, 12:25, 13:1, 43:14, 45:8, 45:19, 50:7, 54:11, 67:2, 67:5, 95:20, 95:21, 110:18, 110:22, 110:23, 174:17 12/31/15 [1] - 215:22 1237 [1] - 150:24 1240 [1] - 152:1 1247 [1] - 154:17 12548 [1] - 2:19 128 [1] - 131:9 13 [6] - 24:16, 28:9, 31:23, 33:11, 45:10, 50:7 1310 [1] - 159:8 1318 [1] - 160:7 1334 [1] - 164:14 1338 [2] - 165:12 1339 [2] - 170:9, 203:15 1368 [1] - 175:11 14 [10] - 14:7, 14:11, 22:22, 47:12, 60:23, 61:8, 103:16, 149:15, 149:20, 150:5 143 [1] - 185:12 1436 [1] - 98:15 1437 [1] - 13:23 144 [3] - 16:15, 17:11, 23:2 147-A [2] - 212:7, 213:1 14th [4] - 69:3, 173:15, 175:9, 215:24 15 [5] - 23:9, 57:1, 58:3, 167:23, 206:11 1515-A [1] - 212:22 15TH [1] - 2:12 15th [3] - 131:25, 133:5, 188:24 16 [6] - 47:5, 47:10, 47:12, 52:17, 53:8, 53:24 168 [6] - 46:19, 48:17, 50:19, 51:15, 52:11, 53:1 168/20 [1] - 48:18 169 [5] - 46:19, 52:12, 53:6, 53:7, 53:23 169/18 [1] - 48:19 169/5 [1] - 53:1 16th [1] - 133:5 17 [12] - 34:4, 35:6, 37:20, 47:9, 59:10, 61:8, 119:5, 178:18, 178:23, 179:20,	181:4 18 [10] - 45:10, 46:19, 52:13, 52:15, 52:17, 53:8, 53:24, 65:20, 66:1, 162:13 184 [2] - 162:11, 162:24 184-acre [1] - 155:15 19 [5] - 12:23, 12:25, 13:1, 46:23, 47:9 19284 [2] - 158:14, 165:8 1960s [1] - 89:12 1961 [1] - 152:9 1964 [2] - 105:20, 105:24 1965 [29] - 34:4, 35:6, 35:12, 77:18, 80:8, 89:15, 94:23, 95:6, 95:25, 98:18, 103:7, 103:19, 108:3, 116:3, 128:12, 130:12, 131:25, 133:5, 133:10, 133:14, 133:23, 134:2, 134:7, 136:14, 136:17, 198:24, 208:7, 212:13, 213:23 1966 [23] - 40:19, 89:7, 107:4, 115:20, 119:9, 123:13, 126:10, 126:15, 129:6, 129:10, 130:8, 133:17, 135:12, 136:17, 139:20, 186:2, 188:7, 208:14, 212:7, 212:19, 213:1, 213:5, 214:1 1967 [3] - 94:1, 186:3, 212:24 1968 [4] - 76:14, 77:2, 77:13, 185:14 1969 [1] - 80:9 1970 [5] - 77:13, 77:21, 94:15, 146:22, 155:14 1972 [1] - 151:22 1973 [2] - 188:24, 189:6 1974 [3] - 78:9, 78:15 1976 [3] - 79:21, 146:23, 151:3 1978 [1] - 49:23 1980 [2] - 79:24, 152:3 19824 [1] - 174:22 1985 [4] - 42:22, 195:13, 195:18, 195:21	1987 [1] - 78:21 1988 [1] - 195:18 1989 [3] - 192:14, 193:14, 193:19 1990 [1] - 78:22 1990s [7] - 154:12, 193:24, 194:10, 205:7, 205:9, 206:20, 206:25 1991 [4] - 57:15, 57:17, 57:25, 154:18 1992 [1] - 158:21 1993 [1] - 160:5 1994 [1] - 172:5 1995 [9] - 96:5, 158:24, 158:25, 161:14, 167:24, 168:4, 201:20, 201:22, 202:3 1996/1997 [1] - 204:8 1998 [1] - 195:20 1999 [2] - 165:11, 166:1 19th [2] - 176:8, 185:14 1st [3] - 57:25, 68:12, 213:5
'				
'50s [1] - 149:1 '60s [14] - 84:9, 88:2, 88:11, 88:23, 89:13, 90:7, 91:17, 91:18, 98:8, 100:11, 137:1, 149:2, 180:1 '65 [13] - 35:7, 43:16, 51:5, 84:10, 95:7, 103:10, 130:22, 130:25, 131:5, 134:1, 134:12, 209:7 '66 [11] - 35:7, 84:10, 95:7, 107:2, 115:20, 119:10, 128:12, 133:19, 136:14, 208:25, 209:7 '70s [2] - 80:3, 192:8 '74 [2] - 78:16, 79:14 '80s [2] - 79:15 '85 [1] - 197:3 '88 [1] - 197:3 '89 [1] - 193:17 '90s [5] - 66:23, 79:15, 192:9, 193:22, 205:24 '92 [1] - 154:14 '93 [5] - 154:14, 159:10, 159:18, 168:6, 168:17 '95 [2] - 160:11, 168:14 '96 [2] - 154:14, 161:24 '97 [3] - 164:17, 164:23, 204:9 '99 [4] - 154:15, 165:20, 168:14, 204:9 'get [1] - 172:25 'it [1] - 57:3 'MIMC' [1] - 16:21 'screening [1] - 71:5	10 [19] - 10:25, 11:11, 11:14, 12:7, 31:24, 33:12, 35:23, 43:3, 43:6, 47:8, 57:23, 58:20, 110:18, 110:22, 110:23, 146:14, 149:21, 174:3, 203:16 10/3 [1] - 12:11 1000 [1] - 3:15 1005 [2] - 192:22, 193:4 101/22 [3] - 63:22, 64:5, 64:23 1019 [1] - 2:12 102 [1] - 63:25 102/4 [3] - 63:23, 64:5, 64:24 103/21 [1] - 65:1 1031 [2] - 167:23, 201:19 1034 [2] - 169:1, 202:16 104 [3] - 65:20, 65:24, 66:1 104-mill [2] - 197:7, 197:8 104/18 [1] - 65:2 1050 [1] - 3:21 106 [6] - 38:15, 41:4, 43:3, 66:9, 67:2, 67:5 107 [4] - 37:10, 38:15, 41:4, 43:4 10:30 [1] - 210:22 10th [4] - 126:15, 129:10, 130:8, 130:12 11 [13] - 12:13, 31:23, 32:19, 33:8, 33:11, 47:5, 47:10, 53:7, 58:19, 61:22, 103:17, 103:19, 163:9 1100 [2] - 3:6, 152:25 1111 [1] - 4:6 1131 [2] - 102:18 11th [4] - 35:12, 68:16,			
/				
/s [1] - 215:21				
0				
01 [1] - 165:9 02 [1] - 165:9				





<p><b>Act</b> [12] - 5:10, 6:23, 10:6, 18:24, 19:12, 136:7, 136:10, 136:11, 136:13, 136:16, 146:11</p> <p><b>acting</b> [1] - 1:5</p> <p><b>action</b> [2] - 189:16</p> <p><b>active</b> [1] - 174:9</p> <p><b>activities</b> [8] - 76:23, 92:17, 94:13, 95:3, 158:16, 169:23, 174:16, 176:19</p> <p><b>activity</b> [16] - 34:5, 35:7, 35:9, 35:14, 37:5, 37:9, 37:22, 37:23, 124:15, 139:10, 139:21, 156:11, 160:23, 161:1, 170:2, 170:5</p> <p><b>actual</b> [12] - 25:1, 25:5, 26:5, 59:6, 59:7, 85:4, 89:12, 95:24, 103:13, 106:22, 158:13, 203:21</p> <p><b>add</b> [1] - 38:21</p> <p><b>added</b> [7] - 108:1, 108:2, 108:7, 116:4, 152:12, 152:13, 184:22</p> <p><b>addition</b> [4] - 69:19, 88:15, 137:4, 179:7</p> <p><b>additional</b> [14] - 12:24, 72:6, 72:9, 108:8, 116:3, 123:1, 146:11, 149:23, 152:12, 152:13, 163:22, 168:7, 211:10, 213:23</p> <p><b>additionally</b> [1] - 169:24</p> <p><b>address</b> [13] - 10:4, 13:7, 21:24, 34:15, 64:11, 64:16, 64:19, 70:12, 74:10, 101:15, 179:1, 179:22, 180:17</p> <p><b>addressed</b> [7] - 6:15, 9:22, 14:2, 68:5, 68:13, 100:22, 101:17</p> <p><b>addresses</b> [2] - 7:23, 212:25</p> <p><b>addressing</b> [4] - 9:8, 101:18, 208:20, 208:23</p> <p><b>adjacent</b> [8] - 106:14, 108:6, 140:8, 157:11, 157:12, 157:13, 157:23,</p>	<p>163:15</p> <p><b>adjourned</b> [1] - 214:9</p> <p><b>administrative</b> [2] - 81:1, 96:10</p> <p><b>admissible</b> [3] - 15:19, 28:4, 37:12</p> <p><b>admission</b> [4] - 54:25, 55:5, 59:14, 60:13</p> <p><b>admissions</b> [1] - 16:13</p> <p><b>admit</b> [3] - 13:18, 13:20, 15:20</p> <p><b>admitted</b> [13] - 15:5, 15:16, 23:7, 54:22, 55:19, 59:13, 60:19, 60:20, 65:11, 65:13, 67:15, 215:15</p> <p><b>admonition</b> [4] - 102:12, 102:13, 104:20, 200:7</p> <p><b>adopted</b> [1] - 73:1</p> <p><b>advance</b> [2] - 92:6, 100:8</p> <p><b>advantage</b> [1] - 113:14</p> <p><b>advise</b> [2] - 5:12, 70:16</p> <p><b>aerial</b> [12] - 105:20, 112:16, 115:20, 167:7, 167:12, 167:15, 167:18, 188:6, 189:6, 205:2</p> <p><b>affected</b> [9] - 90:8, 192:9, 192:16, 193:20, 193:22, 193:23, 193:25, 194:3</p> <p><b>affecting</b> [1] - 206:3</p> <p><b>afoul</b> [1] - 50:2</p> <p><b>afternoon</b> [6] - 75:1, 75:2, 75:4, 129:19, 129:20, 137:23</p> <p><b>afterwards</b> [1] - 44:21</p> <p><b>agencies</b> [4] - 155:6, 156:9, 158:1, 171:10</p> <p><b>Agency</b> [2] - 69:11, 71:1</p> <p><b>agency</b> [6] - 151:6, 152:9, 152:12, 153:10, 154:22, 162:2</p> <p><b>ago</b> [4] - 119:16, 166:21, 183:6, 191:8</p> <p><b>agree</b> [19] - 27:16, 47:5, 75:23, 88:19, 101:13, 117:1, 184:15, 184:24, 185:3, 187:5, 188:5, 188:10, 192:10, 192:20, 194:25,</p>	<p>203:6, 203:11, 209:23, 213:25</p> <p><b>agreed</b> [3] - 70:17, 197:16, 211:8</p> <p><b>agreement</b> [5] - 81:23, 98:22, 212:12, 212:22, 213:1</p> <p><b>agreements</b> [3] - 21:5, 21:16, 213:24</p> <p><b>ahead</b> [3] - 69:23, 91:25, 210:19</p> <p><b>air</b> [4] - 79:18, 93:2, 94:7, 95:4</p> <p><b>AI</b> [2] - 16:15, 17:11</p> <p><b>Allen</b> [15] - 10:19, 10:21, 10:22, 10:23, 23:18, 24:1, 26:9, 32:7, 32:8, 45:24, 54:20, 55:1, 64:17, 64:18, 64:22</p> <p><b>Allen's</b> [1] - 26:9</p> <p><b>allow</b> [14] - 6:5, 9:24, 21:10, 24:5, 33:2, 38:25, 45:23, 56:25, 101:22, 102:6, 109:6, 112:13, 114:24, 199:10</p> <p><b>allowed</b> [4] - 9:25, 24:10, 114:16, 128:25</p> <p><b>allowing</b> [1] - 9:15</p> <p><b>allows</b> [2] - 147:23, 179:17</p> <p><b>almost</b> [1] - 206:23</p> <p><b>altered</b> [1] - 53:2</p> <p><b>alternate</b> [1] - 76:21</p> <p><b>alternated</b> [1] - 77:1</p> <p><b>AMANDES</b> [1] - 3:18</p> <p><b>ambiguity</b> [2] - 214:2, 214:3</p> <p><b>amend</b> [1] - 175:16</p> <p><b>amended</b> [2] - 170:20, 212:22</p> <p><b>amendment</b> [3] - 174:22, 212:11, 214:2</p> <p><b>amendments</b> [1] - 212:25</p> <p><b>amends</b> [1] - 212:25</p> <p><b>American</b> [1] - 78:22</p> <p><b>amount</b> [8] - 72:23, 120:2, 129:2, 141:5, 160:4, 201:3, 201:12</p> <p><b>amounted</b> [1] - 201:15</p> <p><b>amused</b> [1] - 63:6</p> <p><b>analogy</b> [1] - 191:5</p> <p><b>analyses</b> [1] - 120:20</p> <p><b>analysis</b> [8] - 120:18, 120:22, 120:23, 120:25, 128:8,</p>	<p>130:25, 132:7, 173:5</p> <p><b>anchors</b> [1] - 145:1</p> <p><b>ancient</b> [1] - 59:17</p> <p><b>AND</b> [4] - 1:10, 2:10, 3:4, 3:20</p> <p><b>Andy</b> [1] - 171:18</p> <p><b>animation</b> [2] - 109:19, 112:19</p> <p><b>answer</b> [31] - 11:16, 19:14, 24:6, 24:10, 24:12, 24:13, 24:18, 29:3, 36:3, 36:10, 36:19, 36:22, 37:7, 49:19, 50:2, 50:15, 50:21, 51:17, 51:23, 52:17, 57:6, 58:14, 86:13, 90:2, 128:18, 135:19, 137:3, 180:13, 180:24, 181:8</p> <p><b>ANSWER</b> [17] - 32:24, 35:10, 35:15, 47:21, 49:24, 57:18, 57:22, 58:2, 58:8, 58:16, 58:17, 88:2, 88:4, 88:7, 88:9, 88:14, 88:18</p> <p><b>answered</b> [5] - 23:20, 38:14, 38:17, 66:12, 137:7</p> <p><b>answering</b> [1] - 19:16</p> <p><b>answers</b> [6] - 11:8, 11:21, 37:25, 45:14, 46:1, 58:20</p> <p><b>ANTHONY</b> [2] - 2:21, 3:9</p> <p><b>anyway</b> [3] - 62:10, 66:24, 111:2</p> <p><b>apart</b> [3] - 189:12, 191:1</p> <p><b>apologize</b> [2] - 33:15, 41:7</p> <p><b>appear</b> [1] - 56:23</p> <p><b>appearance</b> [1] - 191:7</p> <p><b>appeared</b> [4] - 86:8, 116:3, 146:21, 146:23</p> <p><b>appearing</b> [1] - 129:23</p> <p><b>application</b> [3] - 79:8, 151:23, 158:2</p> <p><b>applied</b> [2] - 105:2, 105:9</p> <p><b>applies</b> [1] - 10:15</p> <p><b>apply</b> [1] - 8:21</p> <p><b>Appraisal</b> [1] - 13:17</p> <p><b>appraisal</b> [2] - 13:2, 13:12</p> <p><b>appreciate</b> [2] - 40:12, 181:7</p>	<p><b>approach</b> [9] - 93:7, 93:9, 96:25, 99:9, 138:6, 195:5, 207:22, 209:20, 210:13</p> <p><b>approaching</b> [2] - 93:13, 122:8</p> <p><b>appropriate</b> [4] - 27:20, 93:19, 99:21, 213:21</p> <p><b>appropriately</b> [1] - 61:22</p> <p><b>approval</b> [10] - 92:21, 92:23, 93:9, 95:15, 95:17, 98:20, 100:25, 105:1, 153:4, 156:18</p> <p><b>approved</b> [4] - 97:7, 97:8, 170:18, 170:21</p> <p><b>approves</b> [1] - 198:11</p> <p><b>approving</b> [1] - 37:23</p> <p><b>April</b> [15] - 68:16, 70:22, 98:18, 119:8, 126:10, 133:23, 161:23, 171:24, 172:13, 173:15, 175:9, 176:12, 208:14, 212:13, 213:23</p> <p><b>aquatic</b> [1] - 211:6</p> <p><b>archived</b> [1] - 43:20</p> <p><b>area</b> [48] - 28:14, 58:11, 58:21, 62:23, 75:25, 80:2, 81:12, 90:22, 91:1, 94:23, 94:25, 105:25, 106:10, 106:14, 106:21, 118:19, 122:18, 124:17, 124:24, 126:25, 138:16, 141:4, 146:20, 148:14, 149:1, 149:4, 162:9, 162:20, 164:8, 167:10, 168:13, 168:15, 169:4, 169:14, 169:17, 174:15, 175:4, 175:14, 177:3, 177:5, 187:8, 187:9, 194:2, 194:16, 195:1, 203:1, 204:3, 204:21</p> <p><b>area's</b> [1] - 173:2</p> <p><b>areas</b> [8] - 48:21, 92:15, 117:23, 118:3, 127:2, 144:9, 180:14</p> <p><b>argue</b> [6] - 11:8, 27:18, 27:20, 27:21,</p>
---	---	--	---	--

<p>49:14, 213:16  <b>argued</b> [2] - 38:3, 71:24  <b>arguing</b> [10] - 14:11, 30:20, 30:21, 35:20, 38:8, 45:14, 45:20, 51:9, 54:19  <b>argument</b> [16] - 10:11, 22:5, 24:14, 24:20, 27:15, 28:10, 28:16, 29:22, 30:2, 31:10, 31:13, 31:14, 56:5, 64:11, 180:3, 213:4  <b>argumentative</b> [2] - 61:19, 62:10  <b>arguments</b> [5] - 24:21, 25:14, 30:3, 30:8, 72:12  <b>arms</b> [1] - 12:15  <b>Army</b> [8] - 62:22, 68:18, 71:8, 151:2, 151:5, 159:11, 160:15, 161:24  <b>arrived</b> [2] - 117:4, 117:5  <b>artfully</b> [1] - 52:7  <b>aside</b> [1] - 207:16  <b>aspects</b> [2] - 6:15, 84:20  <b>assert</b> [1] - 18:2  <b>asserted</b> [2] - 15:22, 16:1  <b>asserting</b> [1] - 14:23  <b>assertion</b> [2] - 14:24, 18:8  <b>Assessment</b> [2] - 27:8, 27:13  <b>assigned</b> [3] - 131:16, 133:6, 175:17  <b>assignment</b> [3] - 131:3, 131:11, 131:23  <b>assist</b> [5] - 77:15, 77:19, 80:15, 81:13, 83:6  <b>ASSISTANT</b> [2] - 2:14, 2:22  <b>assistants</b> [1] - 81:1  <b>assisted</b> [2] - 1:21, 95:17  <b>associated</b> [2] - 78:25, 83:24  <b>assume</b> [6] - 14:2, 18:12, 51:14, 187:23, 193:5, 193:10  <b>assumed</b> [1] - 117:6  <b>assuming</b> [2] - 51:20, 192:5  <b>assumptions</b> [1] -</p>	<p>118:2  <b>assure</b> [1] - 94:9  <b>Astrodome</b> [1] - 89:15  <b>attachments</b> [1] - 62:25  <b>attempt</b> [1] - 21:11  <b>attempted</b> [1] - 18:10  <b>attempting</b> [2] - 97:3, 122:16  <b>attending</b> [1] - 76:18  <b>attention</b> [5] - 84:6, 84:22, 103:24, 105:17, 131:18  <b>ATTORNEY</b> [4] - 2:11, 2:14, 2:18, 2:22  <b>attorney</b> [3] - 19:22, 19:24, 19:25  <b>attorney's</b> [6] - 6:11, 10:11, 48:7, 70:18, 73:17, 74:10  <b>attorney/client</b> [5] - 14:23, 15:1, 15:22, 15:25, 18:8  <b>attorneys</b> [5] - 16:13, 16:23, 18:5, 26:13, 82:24  <b>auger</b> [1] - 147:22  <b>auger-type</b> [1] - 147:22  <b>August</b> [5] - 130:22, 134:6, 134:7, 134:12, 185:14  <b>Austin</b> [3] - 76:6, 157:14, 157:19  <b>AUSTIN</b> [1] - 2:19  <b>authority</b> [3] - 5:19, 63:11, 100:13  <b>Authority</b> [1] - 58:12  <b>authorization</b> [2] - 170:25, 175:21  <b>authorized</b> [2] - 147:12, 165:10  <b>available</b> [10] - 35:8, 35:13, 36:24, 36:25, 37:8, 47:2, 75:16, 118:6, 120:19, 139:4  <b>AVENUE</b> [1] - 3:21  <b>average</b> [3] - 117:16, 149:16, 149:20  <b>aware</b> [13] - 7:21, 16:6, 16:7, 17:24, 18:5, 73:1, 88:16, 88:18, 134:6, 137:5, 137:7, 173:25, 195:13  <b>awhile</b> [3] - 119:16, 166:20, 191:8  <b>Axe</b> [3] - 16:16, 17:9, 17:12  <b>axe</b> [2] - 9:23, 9:24</p>	<p><b>Axe's</b> [3] - 17:6, 17:8, 18:13</p> <p><b>B</b></p> <p><b>bachelor</b> [1] - 76:13  <b>back-of-the-envelope</b> [1] - 118:1  <b>background</b> [4] - 77:11, 87:8, 87:11, 87:12  <b>backgrounds</b> [1] - 87:14  <b>Baker</b> [14] - 1:19, 10:12, 15:5, 15:10, 16:6, 18:4, 19:16, 22:3, 29:10, 30:12, 82:14, 82:22, 83:6, 83:10  <b>BAKER</b> [2] - 2:4, 2:8  <b>BALLESTEROS</b> [1] - 3:10  <b>bank</b> [1] - 104:2  <b>Barbara</b> [1] - 16:16  <b>Barge</b> [1] - 106:12  <b>barge</b> [24] - 102:15, 106:9, 106:15, 108:22, 109:16, 110:15, 111:4, 111:8, 112:17, 112:20, 114:8, 115:5, 115:9, 118:12, 142:1, 142:22, 144:1, 144:15, 145:13, 166:16, 166:24, 173:1, 174:15  <b>barged</b> [2] - 118:8, 127:10  <b>barges</b> [3] - 106:16, 111:15, 127:10  <b>BARRETT</b> [1] - 3:8  <b>base</b> [1] - 144:10  <b>based</b> [23] - 99:3, 101:1, 105:6, 118:17, 119:12, 128:7, 130:9, 132:12, 133:22, 153:12, 153:13, 154:7, 156:22, 158:7, 166:18, 170:3, 173:5, 176:6, 176:14, 176:18, 190:7, 190:15  <b>basin</b> [2] - 111:12, 153:1  <b>basins</b> [2] - 110:8, 141:10  <b>basis</b> [5] - 26:19, 27:23, 30:14, 59:15,</p>	<p>60:5  <b>batch</b> [1] - 114:8  <b>Bates</b> [8] - 68:2, 68:6, 68:14, 68:18, 68:22, 68:25, 69:6, 69:11  <b>bay</b> [1] - 140:24  <b>Bay</b> [2] - 161:6, 161:10  <b>bearing</b> [2] - 53:1, 82:9  <b>bears</b> [1] - 16:2  <b>became</b> [9] - 77:8, 77:13, 91:2, 91:19, 92:15, 110:12, 130:11, 159:17, 162:4  <b>become</b> [3] - 98:10, 130:8, 173:25  <b>becomes</b> [4] - 51:13, 123:23, 124:2, 124:4  <b>becoming</b> [1] - 115:25  <b>bed</b> [1] - 74:3  <b>bedient</b> [1] - 211:7  <b>Bedient</b> [2] - 64:19, 211:17  <b>Bedient's</b> [1] - 193:7  <b>bedient's</b> [1] - 211:16  <b>began</b> [4] - 41:23, 91:13, 95:24, 177:6  <b>begin</b> [1] - 124:16  <b>beginning</b> [7] - 26:8, 27:2, 31:4, 46:20, 85:1, 133:5, 165:9  <b>behalf</b> [12] - 11:21, 16:20, 19:22, 40:3, 45:24, 65:20, 83:1, 83:2, 83:22, 129:23, 136:4, 182:21  <b>behind</b> [4] - 5:20, 153:2, 154:4, 168:13  <b>belabor</b> [1] - 185:24  <b>belief</b> [1] - 28:6  <b>believes</b> [3] - 65:3, 101:5, 185:6  <b>belong</b> [1] - 58:11  <b>below</b> [4] - 143:16, 147:25, 155:16, 155:20  <b>bench</b> [5] - 99:10, 195:7, 207:25, 209:20, 210:15  <b>bend</b> [1] - 154:6  <b>beneath</b> [5] - 133:1, 140:7, 149:22, 149:23, 203:6  <b>BENEDICT</b> [10] - 2:21, 63:18, 67:11, 67:20, 68:11, 69:22, 70:6, 70:14, 71:12, 73:13  <b>benedict</b> [1] - 71:11  <b>Benedict</b> [4] - 67:10,</p>	<p>70:1, 70:12, 211:14  <b>beneficial</b> [11] - 9:19, 16:12, 17:25, 18:3, 19:20, 19:23, 20:8, 20:19, 20:21, 21:2, 21:8  <b>benefit</b> [2] - 16:11, 29:25  <b>Bentsen</b> [2] - 62:19, 62:22  <b>berm</b> [1] - 132:5  <b>berms</b> [1] - 132:13  <b>berthed</b> [1] - 112:21  <b>best</b> [3] - 37:4, 97:14, 106:13  <b>better</b> [4] - 39:22, 173:9, 196:8, 198:18  <b>between</b> [21] - 6:19, 30:19, 87:18, 96:6, 99:17, 113:5, 131:3, 131:15, 133:22, 154:20, 163:8, 168:13, 172:5, 183:9, 185:4, 186:20, 190:25, 207:5, 212:8, 212:12, 212:23  <b>beyond</b> [8] - 24:20, 26:12, 35:20, 93:10, 95:14, 178:8, 178:12, 178:16  <b>bias</b> [1] - 25:21  <b>big</b> [8] - 111:20, 117:19, 141:22, 159:15, 169:18, 169:19, 193:13  <b>bill</b> [1] - 69:25  <b>bind</b> [3] - 11:7, 11:15, 12:3  <b>bit</b> [19] - 22:4, 77:11, 84:7, 84:16, 91:25, 92:10, 95:23, 108:5, 119:14, 121:10, 123:15, 128:23, 129:1, 138:5, 141:4, 147:16, 148:9, 153:22, 169:5  <b>bites</b> [2] - 173:3, 194:4  <b>blah</b> [2] - 52:3, 52:4  <b>bleached</b> [2] - 196:12, 197:18  <b>blob</b> [1] - 125:11  <b>blow</b> [2] - 134:15, 193:12  <b>blowup</b> [1] - 110:4  <b>board</b> [5] - 40:19, 185:12, 185:14, 185:19, 187:14  <b>Board</b> [3] - 152:11, 152:16, 153:7</p>
---	--	---	---	--

**boat** [5] - 148:21,  
152:25, 153:1,  
168:11, 169:10  
**Bob** [4] - 32:7, 32:8,  
64:22, 102:24  
**Bobby** [3] - 96:15,  
103:24, 108:20  
**BOCKIUS** [1] - 3:15  
**BOD** [1] - 42:15  
**body** [4] - 140:15,  
144:11, 154:23,  
160:14  
**book** [1] - 57:24  
**bore** [1] - 168:17  
**boring** [1] - 148:11  
**borings** [6] - 147:17,  
147:18, 147:19,  
147:20, 148:5, 149:8  
**born** [2] - 76:2, 92:16  
**bottom** [11] - 104:10,  
109:3, 114:15,  
126:19, 131:20,  
140:7, 159:19,  
163:14, 165:10,  
171:17, 175:20  
**bought** [3] - 78:11,  
79:3, 148:22  
**boundaries** [2] -  
172:24, 210:3  
**boundary** [1] - 173:2  
**BOX** [1] - 2:19  
**box** [2] - 191:17,  
191:20  
**boxes** [1] - 146:7  
**bracketed** [1] - 172:9  
**break** [11] - 66:3, 66:5,  
66:7, 67:7, 70:9,  
127:22, 127:24,  
182:22, 189:12,  
191:1  
**Brian** [2] - 198:20,  
201:24  
**BRIAN** [1] - 3:11  
**bridge** [4] - 104:4,  
174:3, 174:9, 174:13  
**briefly** [4] - 32:20,  
71:15, 73:13, 171:14  
**bring** [2] - 24:7, 71:16  
**bringing** [1] - 26:19  
**broad** [2] - 6:19,  
180:16  
**broader** [3] - 180:3,  
181:9, 197:10  
**brochures** [1] - 97:18  
**brothers** [5] - 12:15,  
141:22, 159:14,  
159:15, 159:17  
**brought** [7] - 25:2,  
25:11, 25:18, 25:19,  
26:18, 72:1, 171:7

**BRUNS** [1] - 3:5  
**Bryan** [3] - 183:11,  
183:13, 185:22  
**buchanan** [1] - 74:3  
**building** [2] - 94:18,  
141:2  
**built** [13] - 106:2,  
115:22, 117:1,  
131:1, 132:18,  
139:8, 139:16,  
140:17, 140:18,  
140:23, 149:2,  
153:2, 184:16  
**bulkhead** [2] - 153:2,  
154:4  
**bulkheads** [1] -  
168:13  
**bullet** [1] - 96:12  
**bunch** [1] - 61:9  
**Burma** [8] - 96:16,  
97:18, 100:22,  
101:17, 101:18,  
102:13, 103:23,  
132:6  
**burns** [13] - 96:24,  
97:16, 98:12, 100:6,  
100:25, 102:1,  
103:4, 104:7, 107:8,  
110:17, 123:14,  
130:20, 133:8  
**Burns** [7] - 96:15,  
101:2, 103:24,  
104:15, 105:4,  
132:6, 197:24  
**burns'** [3] - 96:13,  
97:13, 97:25  
**Burns'** [6] - 96:22,  
97:8, 99:19, 100:4,  
108:20, 110:14  
**bury** [1] - 90:24  
**business** [4] - 78:14,  
78:18, 78:19, 80:24  
**businesses** [1] - 77:5  
**but..** [1] - 46:2  
**BY** [13] - 2:7, 2:14,  
2:21, 3:8, 3:17, 3:23,  
4:8, 74:25, 129:18,  
137:21, 183:4,  
208:4, 209:22

## C

**calculated** [1] - 156:2  
**calculation** [1] - 118:1  
**campaigns** [1] -  
118:10  
**Canada** [1] - 80:21  
**canal** [1] - 140:18  
**candid** [1] - 19:2  
**candidly** [1] - 24:3

**cannot** [3] - 21:14,  
73:5, 73:7  
**capacity** [6] - 93:3,  
108:5, 108:6,  
115:25, 116:6,  
116:24  
**CAPITOL** [1] - 2:19  
**captain** [2] - 148:21,  
148:22  
**Captain** [26] - 142:6,  
151:16, 151:20,  
151:21, 152:4,  
152:21, 154:3,  
154:25, 155:11,  
158:15, 159:20,  
159:23, 164:21,  
167:3, 168:11,  
169:10, 170:19,  
170:23, 174:19,  
174:21, 175:3,  
175:12, 175:15,  
176:5, 176:9, 210:4  
**car** [1] - 94:17  
**cardboard** [17] -  
125:4, 125:8,  
125:14, 125:17,  
125:20, 125:21,  
190:17, 190:25,  
191:5, 191:7,  
191:13, 191:15,  
191:16, 191:17,  
191:20, 191:25  
**care** [5] - 70:4, 71:16,  
102:14, 104:16,  
105:9  
**careful** [2] - 40:17,  
102:11  
**Caroline** [2] - 1:19,  
215:24  
**Carter** [16] - 74:17,  
90:10, 99:2, 99:14,  
105:17, 127:21,  
128:2, 128:4, 138:1,  
138:22, 180:13,  
180:20, 181:5,  
181:13, 207:21,  
213:3  
**CARTER** [37] - 3:17,  
74:14, 74:18, 74:25,  
81:19, 84:4, 85:7,  
86:2, 86:22, 89:1,  
95:20, 98:16,  
100:17, 103:16,  
107:2, 112:15,  
119:5, 120:8,  
125:23, 126:8,  
128:3, 128:15,  
129:16, 179:13,  
179:18, 180:4,  
181:23, 207:22,

208:4, 209:13,  
210:9, 212:5,  
212:17, 212:19,  
212:21, 213:6,  
213:20  
**cartons** [2] - 125:5,  
125:15  
**cartoon** [1] - 114:12  
**case** [86] - 5:18, 5:20,  
6:15, 9:8, 9:9, 16:5,  
17:24, 18:24, 20:12,  
21:19, 24:9, 24:23,  
26:8, 26:17, 26:18,  
27:4, 28:22, 29:16,  
29:17, 29:20, 30:20,  
30:21, 31:2, 31:4,  
31:12, 32:21, 33:25,  
37:15, 38:3, 41:14,  
41:23, 42:4, 42:12,  
49:2, 52:2, 52:24,  
71:17, 72:2, 72:25,  
73:2, 73:3, 73:18,  
73:22, 74:4, 75:12,  
75:13, 75:16, 81:14,  
81:24, 82:2, 83:5,  
83:7, 84:7, 84:18,  
84:20, 84:25, 85:9,  
85:18, 86:9, 87:6,  
124:17, 129:23,  
130:3, 130:10,  
134:18, 136:2,  
136:24, 150:4,  
162:18, 180:18,  
181:18, 182:20,  
183:10, 187:19,  
188:11, 188:12,  
190:3, 192:1,  
194:21, 200:21,  
201:4, 201:13,  
206:15, 207:12,  
209:11  
**cases** [8] - 30:17,  
30:18, 74:3, 82:1,  
83:4, 87:4, 141:2,  
144:14  
**CAUSE** [1] - 1:2  
**caused** [1] - 207:8  
**causes** [1] - 112:4  
**cautioned** [1] - 115:18  
**cautioning** [1] - 28:15  
**ceased** [5] - 88:17,  
126:15, 129:5,  
130:8, 137:6  
**ceasing** [1] - 89:7  
**Cedilote** [1] - 69:4  
**cell** [1] - 108:8  
**center** [5] - 113:4,  
114:17, 117:1,  
127:17, 130:24  
**central** [4] - 113:12,

128:15, 132:3, 132:5  
**certain** [7] - 22:3,  
25:22, 155:6,  
185:25, 188:10,  
188:11, 188:12  
**certainly** [3] - 39:18,  
42:3, 63:6  
**certification** [2] -  
152:4, 152:22  
**certified** [3] - 13:13,  
14:3, 68:3  
**certifieds** [1] - 68:1  
**certify** [2] - 215:5,  
215:13  
**cetera** [6] - 34:12,  
44:12, 62:9, 125:5,  
163:16  
**challenges** [1] - 7:22  
**chambers** [1] - 215:11  
**Champion** [36] -  
34:10, 86:11, 86:18,  
87:21, 88:20, 89:5,  
91:21, 92:8, 92:10,  
92:14, 93:6, 93:11,  
96:7, 96:11, 97:2,  
98:12, 98:23, 99:3,  
99:6, 99:17, 99:20,  
102:24, 105:9,  
107:21, 109:17,  
120:2, 129:12,  
131:3, 131:15,  
133:22, 197:1,  
197:17, 197:25,  
212:8, 212:23  
**Champion's** [7] - 6:4,  
85:23, 89:21, 91:24,  
96:24, 105:5  
**change** [2] - 103:18,  
213:14  
**changed** [1] - 152:13  
**Channel** [8] - 70:25,  
80:18, 90:14, 92:3,  
92:5, 109:17, 111:5,  
140:17  
**Chapter** [1] - 7:5  
**characteristic** [1] -  
168:24  
**characteristics** [9] -  
119:4, 119:14,  
121:10, 124:9,  
125:16, 125:21,  
190:21, 190:24,  
191:11  
**Charge** [5] - 5:15,  
6:25, 7:8, 7:9, 9:17  
**charge** [2] - 7:22, 7:25  
**CHASE** [1] - 2:5  
**cheap** [2] - 191:15,  
191:16  
**cheaper** [1] - 125:4

<p><b>check</b> [2] - 55:15, 55:23</p> <p><b>chemical</b> [5] - 75:7, 76:13, 76:15, 94:5, 120:24</p> <p><b>chemistry</b> [5] - 76:16, 94:2, 94:3, 94:4, 94:10</p> <p><b>chief</b> [2] - 42:13, 93:1</p> <p><b>CHRIS</b> [1] - 3:18</p> <p><b>chronologically</b> [1] - 192:17</p> <p><b>chunk</b> [1] - 169:19</p> <p><b>circle</b> [2] - 107:23, 128:15</p> <p><b>circular</b> [2] - 115:22, 116:25</p> <p><b>circumscribed</b> [1] - 183:22</p> <p><b>circumstances</b> [4] - 32:21, 143:10, 213:10, 213:19</p> <p><b>citizens</b> [1] - 53:4</p> <p><b>city</b> [1] - 106:11</p> <p><b>civil</b> [3] - 18:6, 76:16, 136:1</p> <p><b>claim</b> [4] - 20:7, 20:9, 73:23, 74:1</p> <p><b>claimed</b> [1] - 82:10</p> <p><b>claims</b> [6] - 70:17, 72:1, 72:24, 73:2, 73:4, 180:18</p> <p><b>clarification</b> [1] - 54:24</p> <p><b>clarified</b> [4] - 182:8, 182:19, 199:25, 204:13</p> <p><b>clarify</b> [2] - 181:16, 182:9</p> <p><b>clarifying</b> [1] - 182:10</p> <p><b>clawed</b> [1] - 18:11</p> <p><b>clay</b> [13] - 101:10, 104:11, 122:8, 132:19, 132:22, 132:24, 133:1, 149:18, 149:21, 149:23, 150:4, 150:13</p> <p><b>clay-type</b> [1] - 132:19</p> <p><b>clays</b> [1] - 143:16</p> <p><b>clean</b> [4] - 48:22, 49:18, 50:2, 200:19</p> <p><b>cleaner</b> [1] - 24:4</p> <p><b>cleaning</b> [1] - 82:4</p> <p><b>clear</b> [12] - 9:2, 16:10, 25:17, 40:6, 41:19, 67:12, 137:24, 138:2, 138:13, 169:13, 203:13, 206:14</p>	<p><b>clearly</b> [2] - 14:2, 17:4</p> <p><b>client</b> [1] - 78:13</p> <p><b>client's</b> [1] - 83:2</p> <p><b>clients</b> [5] - 63:6, 80:18, 87:13, 91:14, 136:4</p> <p><b>clip</b> [3] - 23:5, 24:1, 53:1</p> <p><b>clone</b> [1] - 110:14</p> <p><b>close</b> [3] - 116:1, 160:24, 201:25</p> <p><b>close-up</b> [1] - 201:25</p> <p><b>closed</b> [2] - 135:12, 161:3</p> <p><b>closely</b> [2] - 9:15, 171:11</p> <p><b>closer</b> [1] - 148:13</p> <p><b>closest</b> [2] - 42:18, 126:19</p> <p><b>closure</b> [3] - 88:16, 88:22, 137:5</p> <p><b>co</b> [1] - 63:16</p> <p><b>co-counsel</b> [1] - 63:16</p> <p><b>Code</b> [1] - 136:19</p> <p><b>Coleman</b> [1] - 68:14</p> <p><b>COLIN</b> [1] - 3:10</p> <p><b>colleague</b> [1] - 172:15</p> <p><b>collect</b> [1] - 127:9</p> <p><b>collected</b> [4] - 25:6, 75:17, 109:15, 111:23</p> <p><b>collection</b> [1] - 111:12</p> <p><b>collectively</b> [2] - 68:8, 68:9</p> <p><b>college</b> [3] - 77:4, 80:4, 93:24</p> <p><b>Colonel</b> [1] - 68:17</p> <p><b>column</b> [3] - 174:25, 175:1</p> <p><b>combination</b> [4] - 110:5, 120:5, 150:21, 191:9</p> <p><b>coming</b> [13] - 13:6, 15:19, 30:4, 47:18, 50:12, 50:14, 53:22, 59:17, 60:3, 61:24, 77:21, 112:17, 145:11</p> <p><b>comment</b> [3] - 155:6, 155:8, 198:21</p> <p><b>commentary</b> [1] - 58:5</p> <p><b>comments</b> [8] - 57:19, 57:25, 61:18, 62:8, 62:9, 66:20, 156:8, 156:13</p> <p><b>commercial</b> [11] - 141:11, 149:13, 149:15, 150:3, 154:11, 154:13, 158:14, 158:17,</p>	<p>160:3, 164:18, 164:22</p> <p><b>commercialization</b> [1] - 79:4</p> <p><b>commercially</b> [1] - 147:6</p> <p><b>COMMISSION</b> [1] - 1:5</p> <p><b>commission</b> [5] - 68:12, 68:24, 152:17, 162:1, 173:21</p> <p><b>Commission</b> [1] - 154:21</p> <p><b>committee</b> [1] - 77:23</p> <p><b>communicating</b> [1] - 172:15</p> <p><b>community</b> [1] - 76:6</p> <p><b>compacting</b> [1] - 112:2</p> <p><b>companies</b> [10] - 80:14, 80:17, 80:23, 81:3, 90:10, 92:19, 99:19, 100:16, 130:20, 195:23</p> <p><b>Company</b> [1] - 96:11</p> <p><b>COMPANY</b> [2] - 1:9, 3:14</p> <p><b>company</b> [24] - 77:16, 78:21, 78:25, 79:2, 79:3, 79:7, 79:12, 79:14, 79:16, 80:4, 80:19, 80:25, 81:2, 90:11, 94:18, 96:16, 100:10, 138:12, 147:23, 159:12, 164:20, 172:22, 187:15</p> <p><b>compare</b> [2] - 168:2, 169:1</p> <p><b>compensated</b> [1] - 200:20</p> <p><b>competence</b> [1] - 160:3</p> <p><b>competent</b> [1] - 10:12</p> <p><b>complaining</b> [1] - 94:1</p> <p><b>complaint</b> [1] - 83:16</p> <p><b>complete</b> [1] - 184:10</p> <p><b>completed</b> [1] - 184:13</p> <p><b>completely</b> [5] - 31:10, 186:6, 186:22, 186:25, 187:1</p> <p><b>completeness</b> [13] - 35:21, 37:3, 38:18, 38:21, 40:25, 41:6, 46:12, 46:24, 47:6, 47:23, 51:1, 51:8, 67:5</p>	<p><b>completion</b> [1] - 38:12</p> <p><b>compliance</b> [1] - 20:23</p> <p><b>composed</b> [1] - 101:10</p> <p><b>computer</b> [1] - 1:21</p> <p><b>computer-assisted</b> [1] - 1:21</p> <p><b>computerized</b> [1] - 1:21</p> <p><b>concentration</b> [1] - 110:18</p> <p><b>concentrations</b> [1] - 110:16</p> <p><b>concept</b> [1] - 146:21</p> <p><b>concern</b> [10] - 41:10, 94:9, 101:12, 111:21, 122:24, 174:8, 180:15, 182:14, 182:18, 200:15</p> <p><b>concerned</b> [7] - 19:15, 19:16, 58:7, 161:7, 164:8, 192:2, 206:7</p> <p><b>concerning</b> [7] - 81:15, 87:18, 99:4, 100:23, 209:6, 209:7</p> <p><b>concerns</b> [1] - 93:3</p> <p><b>concluding</b> [1] - 59:1</p> <p><b>conclusion</b> [26] - 11:9, 11:22, 12:4, 12:9, 14:12, 14:18, 14:22, 19:22, 21:1, 21:11, 56:17, 89:25, 90:2, 101:13, 103:1, 104:14, 105:12, 117:5, 117:6, 135:19, 171:12, 187:22, 187:24, 195:1, 211:22, 211:25</p> <p><b>conclusions</b> [5] - 15:6, 15:17, 22:19, 173:6</p> <p><b>concrete</b> [4] - 141:14, 141:15, 190:25, 191:5</p> <p><b>condition</b> [3] - 126:16, 156:15, 198:12</p> <p><b>conditioned</b> [1] - 161:9</p> <p><b>conditions</b> [5] - 105:1, 121:18, 156:21, 159:4, 159:5</p> <p><b>conduct</b> [1] - 105:4</p> <p><b>conducted</b> [1] - 128:9</p> <p><b>Conference</b> [4] - 5:15, 6:25, 7:8, 9:17</p> <p><b>configuration</b> [1] - 106:18</p>	<p><b>configured</b> [1] - 107:6</p> <p><b>confined</b> [2] - 38:1, 124:17</p> <p><b>confirm</b> [4] - 61:1, 61:4, 134:14, 198:17</p> <p><b>confirmed</b> [4] - 59:13, 122:5, 132:20, 197:9</p> <p><b>confusing</b> [1] - 148:9</p> <p><b>congeners</b> [1] - 49:12</p> <p><b>CONGRESS</b> [1] - 2:12</p> <p><b>congressman</b> [3] - 62:24, 63:5, 63:10</p> <p><b>CONNECTICUT</b> [1] - 3:21</p> <p><b>connection</b> [20] - 35:14, 37:5, 37:9, 75:11, 75:19, 75:21, 81:17, 82:13, 82:21, 83:6, 92:7, 92:14, 96:2, 96:4, 98:7, 133:4, 134:17, 136:1, 153:19, 154:9</p> <p><b>connects</b> [2] - 43:12, 43:13</p> <p><b>Connolly</b> [8] - 29:10, 30:12, 82:14, 82:22, 83:6, 83:10, 83:19</p> <p><b>CONNELLY</b> [1] - 2:4</p> <p><b>connelly</b> [1] - 83:9</p> <p><b>consequently</b> [1] - 29:17</p> <p><b>conservation</b> [1] - 161:25</p> <p><b>consider</b> [4] - 40:14, 62:22, 73:20, 213:18</p> <p><b>consideration</b> [1] - 18:2</p> <p><b>considered</b> [5] - 5:7, 5:18, 41:18, 72:23, 156:13</p> <p><b>considering</b> [1] - 5:19</p> <p><b>consistency</b> [2] - 189:11, 190:16</p> <p><b>consistent</b> [5] - 118:24, 127:4, 156:17, 172:7, 174:11</p> <p><b>consolidate</b> [1] - 111:11</p> <p><b>constituent</b> [2] - 62:19, 62:20</p> <p><b>constituted</b> [1] - 120:6</p> <p><b>construct</b> [1] - 132:24</p> <p><b>constructed</b> [9] - 107:8, 130:15, 130:19, 130:21, 132:5, 132:11, 132:14, 132:17, 133:2</p> <p><b>construction</b> [13] -</p>
---	--	--	---	---

99:18, 105:25,  
130:14, 130:24,  
132:15, 139:11,  
140:21, 141:2,  
141:8, 141:24,  
151:6, 174:10,  
174:16  
**construe** [1] - 182:15  
**consultants** [1] -  
79:11  
**consulted** [1] - 78:12  
**consulting** [12] - 75:9,  
78:12, 78:14, 78:18,  
79:10, 79:16, 80:14,  
80:24, 81:4, 82:13,  
82:23  
**contact** [1] - 161:6  
**contain** [1] - 184:23  
**contained** [6] - 15:17,  
111:9, 119:1,  
195:25, 196:3,  
206:17  
**containing** [3] - 127:3,  
194:11, 203:2  
**contains** [2] - 57:19,  
215:6  
**contaminated** [5] -  
28:7, 57:3, 102:7,  
200:13  
**contamination** [1] -  
174:8  
**contemporaneous** [1]  
- 139:3  
**content** [5] - 110:17,  
111:1, 111:3, 123:9,  
123:15  
**context** [2] - 34:23,  
186:23  
**contingency** [1] -  
31:11  
**continuation** [1] -  
52:16  
**continue** [4] - 70:2,  
114:11, 114:13,  
128:2  
**continued** [4] - 6:8,  
70:23, 76:14, 78:19  
**continues** [2] - 7:18,  
72:12  
**continuing** [7] - 5:13,  
6:6, 88:12, 135:13,  
135:22, 137:1  
**contour** [1] - 169:22  
**contract** [22] - 98:17,  
99:15, 99:17, 99:22,  
100:9, 131:3,  
131:12, 131:15,  
131:24, 133:6,  
133:21, 212:8,  
212:9, 212:16,

213:5, 213:7,  
213:12, 213:19,  
213:22, 213:25,  
214:3  
**contracted** [3] - 92:9,  
92:11, 155:14  
**contracting** [1] -  
184:20  
**contractor** [18] -  
89:22, 92:22, 93:7,  
93:9, 95:9, 95:16,  
97:3, 113:14,  
115:14, 118:20,  
121:14, 126:13,  
129:6, 134:3, 161:5,  
208:15, 208:25,  
209:1  
**contractors** [6] -  
91:10, 91:12, 107:9,  
130:20, 132:7,  
184:17  
**contracts** [1] - 91:15  
**contradicting** [1] -  
20:11  
**control** [8] - 24:8,  
77:23, 78:4, 79:25,  
92:20, 93:17, 94:7,  
95:4  
**Control** [5] - 26:3,  
29:17, 152:10,  
152:11, 152:16  
**controversy** [1] -  
163:22  
**convenience** [1] -  
68:2  
**conversation** [1] -  
96:21  
**convert** [1] - 150:18  
**convey** [1] - 174:6  
**conveyance** [3] -  
134:11, 134:23,  
134:24  
**conveyed** [3] - 97:11,  
107:19, 142:23  
**convinced** [1] - 98:11  
**convincing** [1] - 27:5  
**cooperate** [1] - 21:12  
**cooperation** [1] -  
69:10  
**cooperative** [1] -  
76:20  
**cooperatively** [1] -  
34:10  
**coordinate** [1] - 78:6  
**copy** [7] - 14:3, 16:14,  
159:19, 159:20,  
188:24, 205:20,  
215:6  
**COPY** [1] - 1:14  
**copying** [1] - 197:25

**cord** [1] - 161:11  
**corner** [2] - 169:20,  
202:24  
**CORP** [1] - 4:4  
**corp** [1] - 160:15  
**corporate** [16] - 6:18,  
30:9, 32:3, 32:4,  
39:22, 64:14, 64:20,  
77:15, 77:16, 77:22,  
78:3, 78:10, 79:18,  
86:8, 94:15, 196:18  
**Corporation** [8] -  
16:20, 68:22, 69:5,  
129:22, 135:4,  
135:7, 212:9, 212:24  
**CORPORATION** [1] -  
1:10  
**corporation** [3] -  
77:19, 186:1, 186:4  
**corps** [3] - 151:14,  
170:10, 175:13  
**Corps** [20] - 62:22,  
68:18, 71:8, 71:10,  
151:2, 151:3, 151:5,  
151:11, 154:21,  
156:7, 156:13,  
159:11, 160:15,  
161:24, 164:9,  
164:10, 164:16,  
170:11, 176:3  
**correct** [62] - 15:20,  
29:11, 32:23, 32:24,  
35:15, 39:1, 53:25,  
64:6, 75:15, 81:18,  
86:16, 88:23, 96:18,  
97:15, 100:2,  
101:18, 101:19,  
104:8, 104:9, 112:6,  
123:7, 129:25,  
130:3, 132:8, 134:9,  
135:1, 138:20,  
152:18, 152:19,  
154:19, 158:19,  
158:20, 160:10,  
160:16, 161:15,  
162:4, 165:1, 171:5,  
175:2, 183:6,  
185:10, 186:10,  
189:22, 192:17,  
193:20, 195:15,  
196:13, 198:13,  
199:23, 200:21,  
201:20, 201:22,  
202:1, 203:25,  
204:8, 205:1, 206:4,  
206:9, 206:12,  
206:18, 208:22,  
215:6  
**correctly** [5] - 89:4,  
132:2, 201:10,

201:11, 215:14  
**correspondence** [5] -  
152:2, 153:20,  
171:13, 171:23,  
208:24  
**counsel** [20] - 21:20,  
26:20, 26:21, 36:8,  
53:24, 63:8, 63:16,  
99:9, 184:3, 188:19,  
192:4, 201:17,  
202:17, 205:14,  
205:19, 209:24,  
210:13, 211:2,  
211:3, 215:8  
**COUNSEL** [5] - 2:3,  
2:17, 3:4, 3:14, 4:3  
**counselor** [1] - 191:3  
**counsels** [1] - 26:22  
**counter** [2] - 46:8,  
47:7  
**counter-designation**  
[2] - 46:8, 47:7  
**counties** [1] - 141:6  
**counting** [2] - 201:5,  
201:6  
**countries** [2] - 79:6,  
79:9  
**country** [1] - 80:23  
**county** [4] - 18:4,  
18:15, 18:18, 18:21  
**COUNTY** [6] - 1:4, 1:8,  
2:3, 2:11, 2:14,  
215:1  
**County** [96] - 1:20,  
9:23, 9:25, 11:7,  
11:15, 11:21, 11:23,  
12:3, 13:2, 13:11,  
13:17, 15:19, 15:24,  
16:9, 17:21, 18:6,  
18:14, 18:16, 18:20,  
24:17, 32:9, 34:19,  
35:8, 35:13, 36:14,  
36:16, 36:24, 37:1,  
37:8, 37:21, 37:23,  
38:9, 38:10, 39:15,  
39:22, 39:24, 39:25,  
40:2, 40:3, 41:20,  
44:23, 45:25, 46:8,  
48:6, 49:4, 49:6,  
49:22, 49:24, 51:5,  
51:16, 52:9, 56:5,  
56:6, 56:13, 64:8,  
64:14, 73:24, 82:16,  
84:23, 84:24, 85:3,  
86:5, 86:9, 86:17,  
86:25, 87:16, 87:18,  
92:21, 93:2, 93:13,  
93:18, 94:17, 94:19,  
95:4, 97:4, 100:12,  
103:21, 103:23,

104:24, 133:10,  
133:16, 135:25,  
157:2, 157:4, 158:9,  
158:10, 163:10,  
163:12, 163:25,  
182:21, 213:9,  
213:16, 215:4,  
215:23  
**County's** [8] - 18:19,  
32:5, 64:13, 73:2,  
84:15, 136:22,  
183:9, 186:21  
**couple** [19] - 24:2,  
35:1, 43:18, 63:17,  
76:3, 85:25, 103:20,  
128:4, 146:7, 156:5,  
166:5, 173:12,  
177:18, 183:6,  
198:23, 200:16,  
201:14, 209:19  
**course** [5] - 21:19,  
39:24, 72:11, 153:25  
**Court** [7] - 74:4,  
213:18, 213:22,  
215:3, 215:4,  
215:22, 215:23  
**COURT** [217] - 1:2,  
1:4, 5:5, 8:8, 8:11,  
8:13, 10:18, 10:22,  
10:25, 11:4, 11:6,  
11:11, 11:17, 11:25,  
12:5, 12:12, 12:20,  
13:7, 13:11, 14:1,  
14:10, 14:15, 15:2,  
15:13, 17:2, 17:13,  
18:12, 18:21, 19:3,  
19:7, 22:13, 22:23,  
23:3, 23:8, 24:14,  
25:8, 25:23, 26:6,  
26:12, 27:16, 28:11,  
28:21, 29:4, 30:1,  
31:3, 31:8, 31:20,  
31:25, 32:10, 32:16,  
33:2, 33:6, 33:17,  
33:22, 35:1, 35:5,  
35:19, 36:1, 36:13,  
36:21, 37:19, 38:7,  
38:16, 39:3, 39:6,  
39:19, 40:4, 40:9,  
40:12, 40:20, 40:24,  
41:5, 41:25, 42:7,  
42:12, 42:16, 42:23,  
43:5, 43:9, 43:17,  
43:25, 44:8, 44:17,  
45:9, 45:13, 45:20,  
45:22, 46:2, 46:11,  
46:16, 46:22, 47:12,  
47:15, 48:1, 48:5,  
48:8, 48:12, 48:16,  
49:6, 49:13, 50:5,

50:9, 50:18, 50:21,  
50:25, 51:7, 51:11,  
51:13, 51:23, 52:5,  
52:11, 52:14, 53:6,  
53:21, 54:5, 54:16,  
55:3, 55:7, 55:16,  
55:25, 56:3, 57:1,  
57:9, 57:12, 58:25,  
59:9, 59:24, 60:8,  
60:12, 60:15, 60:19,  
60:22, 61:1, 61:12,  
61:16, 61:20, 61:25,  
62:3, 62:13, 63:1,  
63:12, 63:21, 63:25,  
64:4, 64:10, 64:18,  
64:23, 65:1, 65:16,  
65:18, 65:24, 66:2,  
66:8, 66:22, 67:3,  
67:6, 67:9, 67:19,  
68:9, 69:16, 70:1,  
70:7, 70:11, 70:15,  
71:14, 71:19, 72:14,  
73:8, 74:8, 74:16,  
74:20, 90:1, 90:5,  
99:1, 99:9, 99:13,  
105:14, 127:21,  
128:1, 128:18,  
135:18, 137:16,  
137:19, 138:7,  
177:15, 177:20,  
177:23, 178:4,  
178:6, 179:4,  
179:17, 179:22,  
180:12, 181:15,  
182:10, 182:24,  
183:1, 187:23,  
195:6, 195:10,  
196:5, 207:21,  
207:24, 210:8,  
210:10, 210:13,  
210:18, 210:25,  
211:12, 211:21,  
212:4, 212:14,  
212:18, 212:20,  
213:2, 213:14, 214:7  
**court** [20] - 17:24,  
19:2, 23:1, 25:15,  
67:14, 69:18, 70:18,  
71:25, 72:21, 72:23,  
73:1, 73:6, 74:11,  
101:4, 212:6,  
212:15, 213:3,  
213:7, 214:9, 215:11  
**court's** [5] - 19:14,  
22:10, 67:17, 70:2,  
175:23  
**courtroom** [6] - 11:5,  
177:24, 178:2,  
178:5, 192:24,  
192:25  
**cover** [5] - 10:7, 62:18,

122:19, 123:1,  
180:14  
**covered** [2] - 69:20,  
136:22  
**covers** [1] - 49:11  
**CRAIG** [1] - 3:18  
**crane** [2] - 144:4,  
144:25  
**crane-type** [1] -  
144:25  
**created** [2] - 29:19,  
152:9  
**credit** [1] - 54:12  
**critical** [1] - 121:5  
**CROSS** [4] - 129:17,  
137:20, 183:3,  
209:21  
**cross** [8] - 41:25,  
59:23, 113:19,  
114:6, 114:18,  
114:19, 127:2, 179:3  
**cross-examination** [1]  
- 179:3  
**CROSS-**  
**EXAMINATION** [4] -  
129:17, 137:20,  
183:3, 209:21  
**cross-hatched** [1] -  
127:2  
**cross-section** [4] -  
113:19, 114:6,  
114:18, 114:19  
**crossed** [3] - 15:14,  
15:15, 59:18  
**crosses** [1] - 28:14  
**crust** [1] - 189:15  
**CRUTCHER** [1] - 3:21  
**CSR** [1] - 215:21  
**cubic** [3] - 152:25,  
155:18, 155:25  
**culminates** [1] - 99:19  
**cumulative** [3] -  
12:21, 23:13, 54:19  
**current** [1] - 26:21  
**currents** [2] - 189:16,  
207:10  
**cut** [13] - 47:7, 47:13,  
47:14, 49:3, 54:2,  
56:13, 110:13,  
120:15, 121:6,  
123:17, 123:21,  
124:10, 143:15  
**cuts** [3] - 23:2, 34:8,  
143:7  
**cutter** [2] - 143:11,  
143:20  
**cutter-head** [1] -  
143:11  
**cutterhead** [11] -  
143:3, 143:6,

143:12, 143:15,  
144:5, 144:24,  
150:14, 150:16,  
150:19, 150:21,  
150:22  
**cutting** [2] - 40:17,  
122:15

## D

**D.C** [1] - 3:22  
**Daily** [1] - 70:24  
**daily** [6] - 5:25, 8:20,  
24:24, 25:10, 27:19,  
215:6  
**DAILY** [1] - 1:14  
**Dallas** [1] - 68:14  
**damaged** [1] - 124:21  
**DANIEL** [1] - 3:23  
**dark** [1] - 202:11  
**data** [8] - 25:6, 117:24,  
172:2, 189:22,  
190:6, 190:8,  
194:19, 194:24  
**Date** [1] - 215:22  
**date** [18] - 24:18,  
98:19, 129:8, 131:6,  
131:19, 158:18,  
165:18, 175:7,  
188:20, 188:22,  
189:5, 193:11,  
193:14, 193:18,  
193:19, 202:3,  
213:15  
**dated** [13] - 15:11,  
57:15, 57:16, 69:3,  
71:4, 134:12,  
154:18, 159:10,  
160:11, 165:20,  
176:8, 212:12,  
212:24  
**DAVID** [2] - 2:8, 3:19  
**Davis** [1] - 87:1  
**days** [8] - 90:19,  
120:21, 130:13,  
141:16, 172:11,  
172:13, 173:14,  
183:6  
**de** [19] - 107:17,  
108:10, 108:12,  
113:2, 113:3,  
114:19, 114:22,  
116:1, 116:2, 118:3,  
126:3, 127:5, 128:6,  
128:17, 128:24,  
145:15, 186:17,  
187:8, 199:14  
**de-watered** [5] -  
107:17, 108:12,  
116:1, 118:3, 128:24

**de-watering** [14] -  
108:10, 113:2,  
113:3, 114:19,  
114:22, 116:2,  
126:3, 127:5, 128:6,  
128:17, 145:15,  
186:17, 187:8,  
199:14  
**deal** [2] - 90:10,  
117:12  
**dealing** [6] - 48:7,  
79:18, 91:6, 92:17,  
93:2, 180:6  
**deals** [2] - 167:13,  
212:10  
**dealt** [1] - 81:1  
**DEBRA** [1] - 2:8  
**decanted** [1] - 115:1  
**December** [15] -  
68:12, 71:10, 108:2,  
116:3, 130:25,  
158:25, 161:14,  
165:11, 171:1,  
175:12, 175:21,  
198:8, 199:23,  
200:15, 208:7  
**decide** [1] - 6:16  
**decided** [3] - 24:7,  
24:17, 83:21  
**decision** [5] - 23:19,  
26:10, 29:1, 32:5,  
32:6  
**deed** [7] - 12:17,  
12:18, 12:19,  
134:16, 187:12,  
204:22, 204:23  
**deepest** [1] - 115:11  
**DEFENDANT** [3] - 3:4,  
3:14, 4:3  
**defendant** [1] - 21:20  
**Defendants** [1] - 1:11  
**defendants** [22] -  
8:15, 8:17, 10:13,  
10:15, 56:8, 65:20,  
72:15, 74:9, 74:12,  
82:7, 83:25, 84:2,  
84:17, 129:24,  
130:2, 136:2,  
145:23, 157:22,  
163:17, 177:7,  
204:14, 204:16  
**Defendants'** [12] -  
60:20, 95:21, 98:14,  
100:18, 102:18,  
131:8, 134:14,  
167:23, 175:10,  
176:4, 212:7, 212:21  
**defendants'** [5] - 5:6,  
6:18, 8:15, 9:1,  
21:21

**definitely** [6] - 64:2,  
124:23, 191:12,  
202:8, 202:9, 202:14  
**definition** [2] - 74:2,  
179:19  
**definitions** [1] - 8:2  
**degree** [1] - 76:11  
**delivered** [1] - 107:18  
**demonstrate** [2] -  
100:3, 118:9  
**demonstrative** [4] -  
142:5, 142:8,  
143:23, 166:16  
**denied** [17] - 5:11, 6:1,  
6:5, 6:11, 6:13, 6:23,  
7:5, 7:7, 7:15, 7:20,  
9:19, 10:6, 10:13,  
72:16, 74:7, 74:9,  
156:22  
**deny** [2] - 6:20, 156:15  
**denying** [1] - 9:13  
**department** [21] -  
24:7, 32:20, 32:21,  
39:21, 39:23, 68:6,  
68:17, 94:2, 94:4,  
94:5, 151:2, 152:3,  
152:7, 152:23,  
157:15, 161:4,  
173:14, 173:24,  
174:6, 174:18,  
176:12  
**Department** [9] - 26:3,  
29:17, 36:10, 119:7,  
119:13, 126:4,  
127:7, 190:15,  
208:10  
**department's** [2] -  
70:22, 94:10  
**depict** [2] - 105:21,  
109:22  
**depicted** [2] - 114:11,  
142:18  
**depicting** [1] - 148:4  
**depo** [2] - 23:2, 64:20  
**deposit** [2] - 92:12,  
149:24  
**deposited** [5] -  
107:15, 112:1,  
118:19, 128:10,  
180:25  
**deposition** [13] -  
22:16, 28:12, 33:21,  
37:11, 37:12, 41:9,  
41:20, 60:6, 183:6,  
183:15, 189:2,  
200:11, 200:25  
**deposits** [1] - 141:8  
**depth** [6] - 147:24,  
149:20, 155:16,  
155:21, 162:13

<p><b>describe</b> [6] - 41:22, 109:19, 119:15, 122:17, 126:2, 156:5</p> <p><b>described</b> [8] - 109:23, 125:10, 127:6, 127:7, 128:20, 134:20, 147:14, 178:10</p> <p><b>describes</b> [3] - 101:4, 155:11, 176:9</p> <p><b>describing</b> [3] - 120:11, 120:17, 147:4</p> <p><b>description</b> [10] - 100:24, 123:3, 123:6, 125:3, 126:5, 149:6, 149:7, 159:24, 162:9, 166:18</p> <p><b>descriptive</b> [1] - 138:19</p> <p><b>design</b> [3] - 77:7, 95:17, 127:5</p> <p><b>designated</b> [3] - 23:16, 188:8, 195:14</p> <p><b>designation</b> [2] - 46:8, 47:7</p> <p><b>designed</b> [4] - 107:1, 109:5, 116:20, 128:20</p> <p><b>despite</b> [3] - 61:18, 62:8, 66:20</p> <p><b>detail</b> [1] - 194:22</p> <p><b>detailed</b> [1] - 100:12</p> <p><b>detected</b> [1] - 196:15</p> <p><b>deteriorated</b> [1] - 125:8</p> <p><b>determination</b> [2] - 153:14, 213:24</p> <p><b>determine</b> [12] - 47:17, 50:13, 72:21, 73:6, 147:6, 147:24, 149:12, 153:10, 156:14, 156:19, 167:9, 190:1</p> <p><b>determined</b> [4] - 21:7, 155:23, 195:22, 197:12</p> <p><b>develop</b> [1] - 109:19</p> <p><b>developed</b> [15] - 79:7, 79:24, 80:7, 80:11, 80:19, 80:22, 81:6, 90:15, 97:16, 97:19, 105:22, 106:7, 106:21, 121:19, 148:23</p> <p><b>developing</b> [1] - 97:8</p> <p><b>development</b> [4] - 32:22, 77:6, 81:15, 83:7</p>	<p><b>device</b> [5] - 140:10, 142:23, 143:6, 143:22, 144:2</p> <p><b>devices</b> [1] - 92:1</p> <p><b>diagram</b> [4] - 123:10, 148:4, 162:16, 166:16</p> <p><b>diameter</b> [1] - 147:21</p> <p><b>dichotomy</b> [1] - 29:13</p> <p><b>Dickinson</b> [6] - 76:25, 78:3, 80:5, 94:12, 141:21, 159:15</p> <p><b>difference</b> [4] - 30:19, 185:4, 186:20</p> <p><b>differences</b> [2] - 183:8, 187:20</p> <p><b>different</b> [18] - 22:14, 24:1, 28:1, 28:5, 28:16, 38:14, 41:1, 49:12, 55:22, 57:8, 123:14, 125:21, 144:9, 151:6, 158:16, 175:17, 179:5, 183:21</p> <p><b>differentiate</b> [1] - 67:22</p> <p><b>difficult</b> [2] - 97:21, 124:17</p> <p><b>dike</b> [11] - 109:6, 109:10, 113:4, 116:4, 118:16, 169:19, 170:7, 176:24, 184:7, 202:25, 203:9</p> <p><b>diked</b> [1] - 203:1</p> <p><b>dikes</b> [7] - 101:9, 104:11, 113:8, 124:4, 124:5, 132:16, 168:21</p> <p><b>diligence</b> [1] - 99:20</p> <p><b>dioxin</b> [37] - 42:20, 42:21, 47:2, 47:18, 49:5, 49:7, 49:9, 49:10, 49:21, 50:10, 50:12, 50:13, 51:17, 52:10, 52:22, 53:7, 53:10, 65:5, 172:4, 173:16, 176:21, 176:22, 177:5, 194:10, 194:23, 195:2, 195:14, 195:17, 195:25, 196:3, 196:11, 197:5, 197:10, 197:14, 197:19, 206:16, 207:1</p> <p><b>dioxin-loading</b> [1] - 49:10</p> <p><b>direct</b> [4] - 45:15, 84:6, 131:18, 209:5</p>	<p><b>DIRECT</b> [1] - 74:24</p> <p><b>directed</b> [32] - 5:7, 5:10, 5:16, 5:21, 5:25, 6:3, 6:10, 6:13, 6:21, 6:22, 7:5, 7:6, 7:13, 7:19, 8:16, 8:17, 8:19, 8:24, 9:1, 9:12, 9:13, 9:18, 10:5, 10:8, 10:10, 10:14, 26:17, 48:22, 72:15, 72:17, 74:7, 74:8</p> <p><b>direction</b> [1] - 154:16</p> <p><b>directly</b> [7] - 31:7, 128:21, 129:3, 132:18, 134:9, 194:13, 209:25</p> <p><b>director</b> [1] - 78:4</p> <p><b>directors</b> [3] - 185:12, 185:14, 187:14</p> <p><b>disagree</b> [4] - 54:1, 116:16, 185:8, 185:9</p> <p><b>disagreement</b> [1] - 29:15</p> <p><b>discharge</b> [6] - 5:25, 8:20, 36:6, 115:17, 181:12, 181:21</p> <p><b>discharged</b> [2] - 90:18, 92:3</p> <p><b>discharges</b> [1] - 195:23</p> <p><b>discontinuing</b> [1] - 87:25</p> <p><b>discovered</b> [1] - 195:17</p> <p><b>discovery</b> [1] - 22:1</p> <p><b>discuss</b> [4] - 46:9, 84:10, 84:13, 119:3</p> <p><b>discussed</b> [10] - 56:15, 67:14, 122:10, 125:16, 146:15, 190:14, 206:2, 209:24, 211:3, 211:5</p> <p><b>discussing</b> [1] - 184:3</p> <p><b>discussion</b> [23] - 5:3, 6:24, 7:3, 7:8, 7:11, 8:1, 9:20, 99:10, 104:4, 176:2, 185:25, 189:24, 190:14, 190:18, 190:19, 190:22, 191:22, 195:7, 207:25, 210:15, 211:1, 212:2, 214:8</p> <p><b>Discussion</b> [5] - 8:12, 10:17, 56:2, 65:17, 67:8</p> <p><b>disparity</b> [1] - 196:13</p> <p><b>Disposal</b> [1] - 136:10</p>	<p><b>disposal</b> [53] - 7:17, 7:19, 34:4, 34:14, 35:7, 35:8, 35:14, 37:5, 37:9, 37:22, 37:23, 80:1, 80:6, 84:11, 84:12, 85:4, 88:1, 89:23, 91:6, 92:8, 92:12, 93:4, 95:24, 98:2, 98:8, 98:21, 102:2, 106:13, 111:16, 118:23, 121:15, 121:19, 123:12, 125:24, 126:12, 126:14, 129:5, 129:7, 129:9, 133:18, 136:13, 169:20, 180:2, 180:6, 180:7, 180:8, 180:22, 187:11, 198:11, 209:7, 209:8, 209:10, 209:11</p> <p><b>dispose</b> [3] - 91:9, 93:12, 100:1</p> <p><b>disposed</b> [3] - 100:13, 102:16, 162:22</p> <p><b>disposing</b> [4] - 85:11, 91:22, 96:14, 96:23</p> <p><b>dispute</b> [3] - 14:5, 34:16, 87:18</p> <p><b>disputed</b> [1] - 53:17</p> <p><b>disseminated</b> [1] - 208:11</p> <p><b>distinction</b> [3] - 30:18, 118:22, 200:14</p> <p><b>distraction</b> [1] - 22:5</p> <p><b>distribution</b> [1] - 194:7</p> <p><b>DISTRICT</b> [2] - 1:4, 1:11</p> <p><b>district</b> [2] - 13:12, 13:17</p> <p><b>District</b> [2] - 215:4, 215:23</p> <p><b>divert</b> [1] - 123:1</p> <p><b>divide</b> [2] - 24:15, 25:9</p> <p><b>divided</b> [1] - 128:14</p> <p><b>division</b> [2] - 95:5, 96:9</p> <p><b>DIVISION</b> [1] - 2:18</p> <p><b>dock</b> [1] - 59:22</p> <p><b>document</b> [48] - 15:1, 15:6, 15:18, 16:1, 16:2, 19:15, 20:14, 20:16, 24:25, 26:5, 27:3, 27:6, 27:9, 30:16, 37:11, 40:2, 55:13, 56:21, 56:24, 58:4, 59:16, 59:18, 59:20, 62:1, 67:25, 96:1, 98:7, 100:19, 102:19, 120:9, 134:19, 147:3, 147:5, 149:5, 154:24, 156:3, 156:24, 157:21, 159:2, 162:15, 163:9, 165:2, 165:5, 174:17, 185:15, 205:22, 206:1, 206:2</p> <p><b>documentary</b> [1] - 118:7</p> <p><b>documentation</b> [8] - 108:2, 132:25, 139:5, 146:5, 158:1, 167:17, 205:8, 208:13</p> <p><b>documented</b> [4] - 25:5, 25:10, 27:19, 71:3</p> <p><b>documents</b> [42] - 13:2, 19:13, 21:10, 54:25, 55:12, 55:17, 59:17, 67:13, 67:20, 75:13, 75:16, 75:18, 75:20, 84:14, 89:11, 96:8, 99:24, 118:5, 119:12, 119:13, 128:8, 132:21, 135:2, 138:24, 139:6, 139:13, 139:18, 146:7, 146:9, 146:11, 146:15, 146:17, 146:19, 147:1, 163:21, 176:16, 187:20, 192:3, 192:5, 201:17, 205:23, 205:25</p> <p><b>dollars</b> [1] - 201:15</p> <p><b>done</b> [41] - 22:8, 24:25, 26:3, 27:14, 33:15, 38:4, 38:5, 38:6, 43:15, 43:16, 49:22, 75:14, 75:17, 81:16, 82:24, 85:24, 94:6, 99:20, 100:8, 101:21, 102:10, 120:20, 122:6, 136:3, 138:23, 140:12, 141:5, 147:11, 150:20, 160:1, 167:4, 184:19, 188:13, 192:14, 197:4, 199:9, 203:23, 204:1, 204:7, 204:8</p> <p><b>door</b> [11] - 20:25, 27:25, 30:3, 30:7,</p>
---	---	---	---



<p>30:10, 31:13, 31:22, 41:24, 45:5, 46:13, 47:11</p> <p><b>double</b> [2] - 55:23, 62:16</p> <p><b>doubt</b> [1] - 73:14</p> <p><b>down</b> [40] - 12:22, 22:24, 52:15, 54:17, 65:13, 76:25, 94:11, 109:16, 111:5, 115:3, 127:22, 131:20, 141:21, 144:22, 147:8, 147:16, 147:22, 148:13, 149:22, 153:3, 154:23, 157:8, 159:15, 159:16, 159:19, 161:3, 162:8, 165:17, 166:2, 166:6, 166:8, 166:22, 171:17, 172:14, 173:22, 175:19, 183:12, 186:5, 210:10</p> <p><b>Dr</b> [84] - 39:10, 39:12, 39:17, 39:20, 40:3, 59:18, 64:19, 84:16, 86:4, 86:7, 86:14, 87:1, 87:2, 87:3, 87:5, 87:10, 87:15, 88:19, 88:24, 93:7, 93:16, 93:20, 93:23, 94:1, 94:8, 94:13, 94:19, 95:2, 95:15, 95:16, 96:5, 96:22, 96:25, 97:8, 97:12, 97:22, 97:24, 98:5, 98:9, 98:10, 98:20, 100:5, 100:6, 100:22, 101:1, 101:12, 101:15, 101:25, 102:12, 102:17, 103:6, 103:19, 104:14, 106:9, 107:5, 115:18, 116:14, 116:16, 116:23, 117:2, 125:6, 132:20, 136:23, 136:24, 178:1, 178:8, 185:5, 186:21, 193:5, 193:6, 193:7, 193:9, 197:23, 198:5, 198:11, 198:23, 200:1, 200:5, 208:6, 208:8, 208:14, 209:3, 211:17</p> <p><b>dr</b> [1] - 211:16</p>	<p><b>drained</b> [2] - 114:2, 127:14</p> <p><b>drains</b> [1] - 127:15</p> <p><b>draw</b> [1] - 113:20</p> <p><b>drawing</b> [2] - 114:19, 127:1</p> <p><b>drawn</b> [1] - 180:10</p> <p><b>dredge</b> [30] - 55:11, 59:8, 142:1, 142:18, 143:2, 143:4, 143:9, 143:20, 144:1, 144:7, 144:9, 144:12, 144:14, 144:21, 145:2, 148:24, 148:25, 149:2, 149:4, 150:15, 155:16, 155:19, 158:14, 166:2, 166:3, 166:9, 169:13, 173:1, 192:3</p> <p><b>dredged</b> [6] - 140:17, 140:18, 140:25, 141:1, 141:17, 149:1</p> <p><b>dredger</b> [4] - 142:7, 143:11, 143:12, 143:24</p> <p><b>dredgers</b> [2] - 142:12, 164:10</p> <p><b>dredging</b> [120] - 55:16, 56:25, 57:20, 57:25, 58:4, 58:5, 58:6, 59:4, 59:6, 59:7, 59:10, 59:16, 59:17, 62:23, 63:5, 65:8, 66:13, 66:25, 70:23, 71:9, 84:20, 140:4, 140:5, 140:6, 140:11, 140:12, 140:21, 141:4, 141:5, 141:13, 141:19, 141:22, 142:16, 144:11, 144:15, 145:19, 145:23, 146:2, 146:5, 146:9, 146:12, 146:15, 146:20, 146:22, 146:23, 147:7, 150:10, 150:11, 151:9, 151:24, 152:24, 154:4, 154:8, 154:11, 154:13, 154:14, 155:11, 158:9, 159:23, 159:25, 160:2, 160:4, 161:3, 161:9, 161:20, 162:9, 162:25, 163:8, 164:5, 164:8, 164:17, 164:20,</p>	<p>164:22, 164:24, 167:3, 167:9, 167:21, 168:5, 168:12, 168:15, 168:16, 168:17, 169:23, 170:2, 170:5, 171:8, 174:10, 175:4, 175:14, 176:6, 176:23, 177:8, 192:8, 192:15, 193:20, 193:22, 193:23, 194:3, 194:10, 201:16, 202:2, 202:19, 202:23, 203:3, 203:21, 204:7, 204:10, 204:15, 204:21, 205:24, 206:3, 206:20, 206:25, 207:16, 209:23, 209:24, 210:2</p> <p><b>dredging-type</b> [1] - 205:24</p> <p><b>drew</b> [1] - 101:13</p> <p><b>dried</b> [3] - 125:4, 125:13</p> <p><b>drill</b> [1] - 147:22</p> <p><b>drills</b> [1] - 147:22</p> <p><b>driven</b> [14] - 26:1, 26:2, 29:15, 29:17, 30:7, 30:11, 30:13, 30:22, 31:1, 31:14, 166:8, 166:23, 174:13</p> <p><b>dry</b> [2] - 122:13, 125:12</p> <p><b>due</b> [2] - 99:20, 189:18</p> <p><b>dug</b> [1] - 172:20</p> <p><b>Dukert</b> [1] - 60:9</p> <p><b>duly</b> [1] - 74:23</p> <p><b>dump</b> [2] - 91:13, 186:3</p> <p><b>dumping</b> [1] - 91:1</p> <p><b>dumpsite</b> [1] - 186:8</p> <p><b>DUNN</b> [1] - 3:21</p> <p><b>duplicate</b> [1] - 69:1</p> <p><b>during</b> [28] - 17:4, 19:5, 22:7, 25:6, 44:19, 76:17, 79:13, 84:12, 85:24, 91:3, 104:16, 104:17, 104:18, 114:22, 117:14, 128:11, 139:15, 139:17, 166:10, 168:14, 182:16, 183:17, 184:13, 186:2, 199:5, 205:6,</p>	<p>208:20, 209:7</p> <p><b>duties</b> [2] - 152:12, 152:13</p>	<p><b>E</b></p> <p><b>e-mail</b> [2] - 171:17, 171:18</p> <p><b>e-mailing</b> [2] - 171:24, 172:13</p> <p><b>e-mails</b> [1] - 173:17</p> <p><b>earliest</b> [2] - 147:3, 151:19</p> <p><b>early</b> [5] - 66:23, 79:15, 83:8, 91:17, 134:7</p> <p><b>earn</b> [1] - 200:23</p> <p><b>earnest</b> [1] - 205:21</p> <p><b>EARNEST</b> [1] - 2:7</p> <p><b>earth</b> [1] - 124:14</p> <p><b>earth-moving</b> [1] - 124:14</p> <p><b>easily</b> [2] - 102:10, 166:17</p> <p><b>east</b> [3] - 106:24, 111:13, 127:15</p> <p><b>eastern</b> [31] - 107:19, 107:20, 107:25, 109:13, 109:15, 112:14, 113:13, 113:16, 115:14, 116:5, 116:9, 116:15, 118:13, 126:22, 127:10, 127:19, 128:6, 128:11, 128:14, 128:16, 128:22, 132:4, 138:9, 138:11, 184:5, 184:13, 184:22, 194:4, 202:7, 203:4</p> <p><b>easy</b> [2] - 67:23, 124:19</p> <p><b>education</b> [2] - 76:10, 76:20</p> <p><b>effect</b> [7] - 91:19, 105:1, 158:23, 178:9, 179:8, 179:25, 180:25</p> <p><b>effects</b> [4] - 49:20, 158:6, 178:13, 179:12</p> <p><b>effluent</b> [3] - 92:3, 195:24, 197:5</p> <p><b>effort</b> [2] - 99:23, 204:14</p> <p><b>efforts</b> [1] - 71:2</p> <p><b>egg</b> [2] - 125:5, 125:15</p> <p><b>eight</b> [3] - 111:6, 147:20, 148:12</p>	<p><b>eight-mile</b> [1] - 111:6</p> <p><b>either</b> [13] - 8:3, 25:6, 28:22, 44:23, 54:25, 55:1, 133:19, 136:18, 136:20, 139:18, 145:14, 150:20, 207:10</p> <p><b>elevated</b> [4] - 52:21, 53:10, 53:11, 53:12</p> <p><b>elevation</b> [3] - 113:7, 113:9, 113:13</p> <p><b>elsewhere</b> [1] - 55:21</p> <p><b>embodiment</b> [2] - 99:22, 162:1</p> <p><b>emerging</b> [1] - 77:20</p> <p><b>emissions</b> [1] - 94:2</p> <p><b>emitting</b> [1] - 94:2</p> <p><b>end</b> [11] - 25:17, 53:23, 57:4, 68:10, 113:4, 123:12, 139:20, 143:6, 149:3, 158:24, 184:25</p> <p><b>ended</b> [1] - 34:14</p> <p><b>ending</b> [1] - 64:1</p> <p><b>ends</b> [2] - 53:7, 57:5</p> <p><b>enforcement</b> [4] - 23:14, 93:3, 94:24, 95:1</p> <p><b>engage</b> [1] - 37:21</p> <p><b>engineer</b> [4] - 75:7, 75:8, 77:8, 77:9</p> <p><b>engineered</b> [2] - 115:13, 191:20</p> <p><b>Engineering</b> [4] - 96:17, 97:19, 132:6, 197:24</p> <p><b>engineering</b> [9] - 76:14, 76:16, 94:5, 96:16, 100:22, 101:18, 102:13, 103:24</p> <p><b>engineers</b> [2] - 156:7, 170:10</p> <p><b>Engineers</b> [17] - 62:22, 68:18, 71:8, 71:9, 71:10, 151:2, 151:4, 151:5, 151:11, 154:21, 156:14, 160:16, 161:24, 164:9, 164:16, 170:11, 176:4</p> <p><b>Engineers'</b> [1] - 164:11</p> <p><b>ensure</b> [1] - 102:14</p> <p><b>entered</b> [4] - 70:19, 73:18, 98:22, 100:9</p> <p><b>entire</b> [6] - 50:21, 98:3, 124:24,</p>
--	--	---	--	--	---



182:19 <b>fairly</b> [1] - 169:13 <b>fairness</b> [2] - 10:3, 20:6 <b>familiar</b> [7] - 87:2, 135:24, 141:20, 143:25, 172:24, 183:20, 198:25 <b>far</b> [6] - 27:25, 28:15, 38:3, 84:14, 99:15, 192:2 <b>farming</b> [1] - 76:5 <b>fat</b> [1] - 33:14 <b>favorable</b> [1] - 74:3 <b>February</b> [5] - 16:15, 17:11, 17:14, 188:24, 212:24 <b>federal</b> [3] - 79:21, 93:15, 156:9 <b>fee</b> [1] - 31:11 <b>fees</b> [9] - 6:11, 10:11, 70:18, 72:21, 73:5, 73:7, 73:17, 74:10, 201:12 <b>feet</b> [8] - 149:16, 149:20, 149:21, 150:5, 155:16, 155:20, 162:13 <b>felt</b> [1] - 93:18 <b>fencing</b> [1] - 205:5 <b>few</b> [8] - 8:9, 71:16, 79:9, 81:5, 126:15, 140:3, 172:11, 172:13 <b>fibers</b> [4] - 110:7, 119:23, 191:9 <b>fibrous</b> [4] - 110:5, 120:5, 125:14, 125:18 <b>fields</b> [1] - 76:15 <b>fifth</b> [1] - 162:1 <b>fight</b> [1] - 55:12 <b>figure</b> [5] - 50:11, 172:18, 180:16, 182:18, 188:23 <b>Figure</b> [1] - 172:18 <b>file</b> [2] - 158:3, 164:15 <b>filed</b> [15] - 18:6, 18:20, 18:24, 19:8, 20:15, 20:17, 21:25, 27:18, 27:21, 29:7, 30:22, 72:15, 73:24, 163:20, 163:25 <b>files</b> [1] - 75:18 <b>filing</b> [7] - 19:12, 19:17, 27:13, 27:23, 30:25, 31:7, 31:9 <b>fill</b> [4] - 118:3, 122:18, 146:11, 187:7 <b>filled</b> [13] - 114:20,	115:14, 184:11, 186:7, 186:11, 186:13, 186:16, 186:19, 186:22, 186:25, 187:1, 187:3, 187:10 <b>filling</b> [3] - 108:3, 112:18, 113:3 <b>final</b> [2] - 115:7, 129:4 <b>finally</b> [1] - 69:7 <b>financial</b> [2] - 30:21, 31:12 <b>findings</b> [3] - 21:19, 27:3, 27:12 <b>fine</b> [13] - 11:19, 12:10, 29:4, 47:9, 49:18, 52:9, 60:12, 64:18, 64:21, 67:4, 84:21, 94:4, 177:1 <b>finish</b> [3] - 20:5, 116:2, 177:6 <b>finished</b> [1] - 108:4 <b>fire</b> [5] - 43:19, 44:6, 44:9, 44:16, 44:17 <b>fired</b> [1] - 161:4 <b>firm</b> [5] - 82:15, 82:19, 82:22, 83:6, 83:11 <b>firm's</b> [1] - 83:1 <b>firmly</b> [1] - 172:3 <b>FIRST</b> [1] - 2:14 <b>first</b> [58] - 8:14, 10:24, 16:16, 20:14, 24:16, 30:25, 55:15, 66:14, 66:15, 67:25, 71:23, 78:1, 78:13, 81:20, 84:22, 86:1, 87:23, 89:15, 93:24, 100:21, 101:3, 103:20, 104:23, 110:3, 111:23, 125:2, 128:5, 130:12, 131:11, 133:20, 140:4, 142:5, 144:7, 145:21, 146:20, 146:22, 151:3, 151:19, 151:22, 152:20, 154:8, 154:13, 156:4, 156:19, 165:23, 171:7, 172:1, 172:19, 173:23, 174:5, 178:7, 193:3, 193:15, 197:23, 198:14, 198:16, 212:6 <b>firsthand</b> [3] - 100:7, 100:8, 142:2 <b>fiscal</b> [2] - 186:2, 186:3	<b>fish</b> [5] - 47:2, 47:11, 50:3, 50:7, 50:22 <b>five</b> [4] - 71:3, 137:25, 182:22, 196:10 <b>five-mill</b> [1] - 196:10 <b>five-minute</b> [1] - 182:22 <b>five-volume</b> [1] - 71:3 <b>fixture</b> [2] - 5:13, 6:7 <b>flagged</b> [1] - 171:7 <b>flashed</b> [1] - 16:5 <b>flat</b> [1] - 173:4 <b>float</b> [1] - 112:9 <b>floating</b> [1] - 114:15 <b>floats</b> [1] - 145:12 <b>flood</b> [1] - 189:16 <b>FLOOR</b> [2] - 2:12, 4:6 <b>Floor</b> [1] - 215:24 <b>flotation</b> [1] - 144:2 <b>flourish</b> [1] - 78:20 <b>flourished</b> [1] - 90:16 <b>flow</b> [8] - 112:14, 113:6, 114:16, 114:24, 120:2, 120:3, 121:8, 194:4 <b>flowed</b> [1] - 194:15 <b>flowing</b> [1] - 143:1 <b>flows</b> [1] - 143:1 <b>fluid</b> [1] - 150:18 <b>fluidized</b> [1] - 142:21 <b>fluidizes</b> [1] - 143:7 <b>focus</b> [4] - 22:10, 84:22, 85:17, 183:14 <b>focused</b> [3] - 167:21, 172:7, 172:10 <b>folders</b> [1] - 69:13 <b>follow</b> [4] - 40:17, 94:13, 206:24, 212:9 <b>follow-on</b> [1] - 212:9 <b>follow-up</b> [2] - 40:17, 206:24 <b>followed</b> [3] - 46:5, 96:24 <b>following</b> [14] - 1:19, 5:3, 5:8, 70:9, 99:11, 106:3, 127:25, 169:22, 179:20, 195:9, 208:1, 210:16, 210:23, 212:3 <b>follows</b> [2] - 74:23, 102:9 <b>FOR</b> [5] - 2:3, 2:17, 3:4, 3:14, 4:3 <b>Ford</b> [9] - 87:1, 87:2, 87:3, 87:5, 87:10, 87:15, 88:19, 88:24, 136:23 <b>Ford's</b> [1] - 136:24 <b>foregoing</b> [1] - 215:6	<b>form</b> [3] - 121:3, 133:23, 211:9 <b>formal</b> [1] - 103:22 <b>formalized</b> [1] - 40:1 <b>formed</b> [5] - 78:11, 79:10, 79:14, 130:15, 197:14 <b>former</b> [2] - 135:11, 152:15 <b>formidable</b> [1] - 143:22 <b>forming</b> [1] - 79:10 <b>forms</b> [1] - 189:15 <b>formulated</b> [1] - 90:8 <b>forth</b> [2] - 118:18, 124:11 <b>fortuitous</b> [1] - 138:18 <b>forum</b> [1] - 6:16 <b>forward</b> [9] - 29:6, 77:12, 83:7, 84:24, 98:21, 99:3, 99:6, 109:23, 139:19 <b>foundation</b> [3] - 36:4, 161:6, 161:10 <b>four</b> [5] - 64:14, 137:25, 144:8, 148:12, 148:13 <b>fourth</b> [2] - 64:8, 174:22 <b>frame</b> [8] - 9:12, 84:9, 95:25, 139:7, 139:15, 167:8, 172:6, 172:7 <b>framed</b> [1] - 9:21 <b>France</b> [1] - 80:21 <b>frank</b> [1] - 147:12 <b>frankly</b> [2] - 25:25, 47:6 <b>free</b> [1] - 143:1 <b>free-flowing</b> [1] - 143:1 <b>Freedom</b> [2] - 18:23, 19:11 <b>freedom</b> [1] - 19:9 <b>frequently</b> [1] - 142:17 <b>front</b> [12] - 15:12, 22:5, 23:25, 24:10, 26:8, 30:15, 53:20, 62:5, 158:22, 211:4, 213:10, 213:17 <b>full</b> [7] - 75:3, 78:2, 115:25, 149:7, 156:4, 161:13, 185:7 <b>full-time</b> [1] - 78:2 <b>fume</b> [1] - 94:3 <b>function</b> [1] - 147:24	<b>gained</b> [1] - 80:5 <b>gaining</b> [1] - 76:22 <b>Galveston</b> [3] - 141:6, 161:6, 161:10 <b>game</b> [1] - 31:10 <b>gather</b> [1] - 140:21 <b>gathered</b> [4] - 75:13, 118:12, 141:13, 143:1 <b>gathering</b> [1] - 140:22 <b>GC</b> [2] - 139:14, 139:25 <b>gen</b> [1] - 25:4 <b>GENERAL</b> [2] - 2:18, 2:22 <b>general</b> [7] - 30:5, 42:6, 90:15, 134:16, 145:20, 157:14, 174:15 <b>generally</b> [4] - 87:8, 109:22, 144:16, 150:11 <b>generated</b> [4] - 90:20, 90:22, 108:13, 201:12 <b>gentlemen</b> [5] - 70:15, 71:15, 75:4, 177:20, 210:19 <b>GEORGE</b> [1] - 2:8 <b>Germany</b> [1] - 80:21 <b>GIBBS</b> [2] - 3:5, 3:8 <b>GIBSON</b> [1] - 3:21 <b>Giugliano</b> [1] - 59:19 <b>GIUGLIANO</b> [4] - 3:9, 55:20, 55:23, 59:23 <b>given</b> [3] - 69:19, 98:20, 180:23 <b>global</b> [1] - 8:18 <b>Golemon</b> [1] - 196:23 <b>Golemon's</b> [1] - 41:20 <b>Gordon</b> [1] - 134:22 <b>gosh</b> [1] - 27:7 <b>governed</b> [1] - 89:19 <b>government</b> [4] - 22:11, 34:11, 151:5, 151:7 <b>grade</b> [3] - 125:4, 191:15, 191:16 <b>graduate</b> [2] - 76:11, 76:15 <b>graduated</b> [2] - 77:4, 77:8 <b>grant</b> [2] - 5:21, 8:25 <b>granted</b> [8] - 8:24, 72:17, 158:12, 158:14, 161:15, 164:2, 165:6, 175:20 <b>granting</b> [1] - 153:12 <b>granular</b> [2] - 140:7, 142:21
<b>G</b>				
<b>gain</b> [1] - 139:2				

<p><b>graphically</b> <sup>[1]</sup> - 114:25</p> <p><b>grass</b> <sup>[7]</sup> - 122:13, 122:19, 122:24, 124:1, 161:11, 179:6, 179:21</p> <p><b>gravel</b> <sup>[2]</sup> - 141:2, 141:9</p> <p><b>gravity</b> <sup>[1]</sup> - 113:15</p> <p><b>Gray</b> <sup>[2]</sup> - 135:24, 211:23</p> <p><b>gray</b> <sup>[1]</sup> - 149:15</p> <p><b>GRAY</b> <sup>[9]</sup> - 4:8, 129:18, 131:8, 134:13, 137:14, 187:21, 195:4, 209:15, 211:18</p> <p><b>great</b> <sup>[2]</sup> - 142:11, 194:22</p> <p><b>grew</b> <sup>[2]</sup> - 80:19, 141:10</p> <p><b>gross</b> <sup>[1]</sup> - 197:9</p> <p><b>group</b> <sup>[2]</sup> - 13:16, 77:15</p> <p><b>grow</b> <sup>[7]</sup> - 78:19, 122:24, 124:1, 124:2, 178:10, 179:6, 179:21</p> <p><b>growing</b> <sup>[2]</sup> - 168:23, 179:5</p> <p><b>grows</b> <sup>[2]</sup> - 112:11, 179:6</p> <p><b>growth</b> <sup>[1]</sup> - 168:25</p> <p><b>guess</b> <sup>[14]</sup> - 6:3, 10:20, 40:24, 56:18, 61:14, 77:25, 93:18, 93:24, 93:25, 138:18, 170:22, 186:24, 192:19, 205:23</p> <p><b>guidance</b> <sup>[3]</sup> - 22:10, 96:25, 105:4</p> <p><b>guidelines</b> <sup>[1]</sup> - 105:8</p> <p><b>Gulf</b> <sup>[1]</sup> - 91:2</p> <p><b>guys</b> <sup>[1]</sup> - 103:12</p>	<p><b>hands</b> <sup>[1]</sup> - 76:22</p> <p><b>hands-on</b> <sup>[1]</sup> - 76:22</p> <p><b>handwritten</b> <sup>[3]</sup> - 154:1, 157:9, 157:10</p> <p><b>hard</b> <sup>[9]</sup> - 14:3, 73:18, 98:19, 108:17, 110:12, 184:8, 189:15, 191:10, 205:20</p> <p><b>hard-pressed</b> <sup>[1]</sup> - 73:18</p> <p><b>hardness</b> <sup>[1]</sup> - 190:1</p> <p><b>harmful</b> <sup>[3]</sup> - 10:8, 42:5, 158:6</p> <p><b>HARRIS</b> <sup>[4]</sup> - 1:4, 1:8, 2:3, 215:1</p> <p><b>Harris</b> <sup>[86]</sup> - 1:20, 9:23, 9:25, 11:7, 11:15, 11:21, 11:23, 12:3, 13:2, 13:11, 13:17, 15:19, 16:9, 24:17, 32:5, 32:9, 34:19, 35:8, 35:13, 36:14, 36:16, 36:24, 37:1, 37:8, 37:20, 37:22, 38:9, 38:10, 39:15, 39:22, 39:24, 39:25, 40:2, 40:3, 41:20, 44:23, 45:25, 46:8, 49:3, 49:6, 49:22, 49:24, 51:5, 51:16, 52:9, 56:5, 56:6, 56:13, 64:8, 64:12, 64:14, 73:23, 82:16, 84:15, 86:5, 86:8, 86:17, 86:25, 87:16, 92:21, 93:2, 93:13, 93:18, 94:17, 94:19, 95:4, 103:21, 103:23, 133:10, 133:16, 135:25, 136:22, 157:2, 157:4, 158:9, 158:10, 163:10, 163:12, 163:25, 182:21, 183:9, 186:21, 213:9, 213:16, 215:4, 215:23</p> <p><b>hatched</b> <sup>[1]</sup> - 127:2</p> <p><b>hate</b> <sup>[1]</sup> - 53:15</p> <p><b>hailed</b> <sup>[5]</sup> - 117:21, 124:15, 127:20, 130:13, 186:3</p> <p><b>hauling</b> <sup>[1]</sup> - 91:13</p> <p><b>Haustein</b> <sup>[1]</sup> - 68:18</p> <p><b>hazardous</b> <sup>[3]</sup> - 42:22, 79:25, 195:14</p> <p><b>HCAD</b> <sup>[2]</sup> - 13:6, 14:4</p> <p><b>head</b> <sup>[9]</sup> - 39:21, 39:23, 79:3, 92:20, 143:11, 145:2, 150:19, 150:22, 179:19</p> <p><b>headed</b> <sup>[1]</sup> - 48:14</p> <p><b>headquartered</b> <sup>[1]</sup> - 77:17</p> <p><b>Health</b> <sup>[9]</sup> - 27:8, 27:12, 36:11, 103:23, 119:13, 126:4, 127:7, 190:15, 208:10</p> <p><b>health</b> <sup>[4]</sup> - 48:21, 49:19, 53:4, 211:6</p> <p><b>Health's</b> <sup>[1]</sup> - 119:7</p> <p><b>hear</b> <sup>[7]</sup> - 32:10, 83:19, 86:25, 87:15, 115:23, 181:11, 196:16</p> <p><b>heard</b> <sup>[13]</sup> - 1:18, 5:6, 81:23, 86:4, 86:24, 92:9, 93:8, 101:2, 117:2, 140:2, 175:23, 179:5</p> <p><b>hearing</b> <sup>[3]</sup> - 99:11, 208:1, 210:16</p> <p><b>hearsay</b> <sup>[9]</sup> - 12:24, 13:5, 13:12, 14:11, 23:6, 55:8, 56:17, 62:16, 65:3</p> <p><b>heavier</b> <sup>[2]</sup> - 112:6, 119:21</p> <p><b>heavily</b> <sup>[1]</sup> - 169:14</p> <p><b>heavy</b> <sup>[4]</sup> - 97:20, 121:17, 121:21, 124:13</p> <p><b>heirs</b> <sup>[3]</sup> - 21:4, 21:9, 21:16</p> <p><b>held</b> <sup>[3]</sup> - 1:19, 133:24, 134:4</p> <p><b>hello</b> <sup>[1]</sup> - 137:22</p> <p><b>help</b> <sup>[1]</sup> - 165:24</p> <p><b>Henderson</b> <sup>[4]</sup> - 96:7, 96:9, 102:24, 120:14</p> <p><b>hereby</b> <sup>[1]</sup> - 215:5</p> <p><b>HGHC</b> <sup>[1]</sup> - 49:25</p> <p><b>high</b> <sup>[7]</sup> - 108:18, 108:19, 110:12, 110:25, 188:19, 192:12, 193:16</p> <p><b>higher</b> <sup>[3]</sup> - 76:9, 113:12, 123:15</p> <p><b>highlight</b> <sup>[1]</sup> - 165:22</p> <p><b>highlighted</b> <sup>[1]</sup> - 17:15</p> <p><b>highlighting</b> <sup>[1]</sup> - 125:2</p> <p><b>Highway</b> <sup>[2]</sup> - 104:3, 174:3</p> <p><b>highways</b> <sup>[1]</sup> - 157:15</p> <p><b>himself</b> <sup>[1]</sup> - 105:5</p>	<p><b>HINTON</b> <sup>[24]</sup> - 4:8, 8:9, 12:16, 13:1, 13:15, 13:23, 14:8, 14:13, 14:19, 15:4, 15:10, 15:15, 16:17, 17:7, 17:18, 18:15, 18:23, 20:4, 20:13, 22:20, 22:25, 23:5, 72:5, 73:11</p> <p><b>hip</b> <sup>[1]</sup> - 74:1</p> <p><b>historical</b> <sup>[7]</sup> - 75:20, 84:14, 117:15, 138:24, 167:7, 167:13, 167:15</p> <p><b>history</b> <sup>[6]</sup> - 132:8, 145:18, 146:15, 154:7, 165:8, 171:7</p> <p><b>HIT</b> <sup>[5]</sup> - 154:2, 162:20, 163:7, 169:24</p> <p><b>hmm</b> <sup>[1]</sup> - 41:25</p> <p><b>hold</b> <sup>[3]</sup> - 111:20, 116:25, 124:5</p> <p><b>home</b> <sup>[1]</sup> - 210:21</p> <p><b>Honor</b> <sup>[82]</sup> - 8:6, 11:2, 11:19, 12:16, 13:1, 14:8, 14:13, 14:19, 14:24, 15:9, 15:20, 15:23, 16:18, 17:18, 18:16, 20:13, 20:25, 22:25, 23:6, 23:25, 25:16, 28:10, 28:25, 31:17, 31:22, 32:1, 32:15, 33:13, 34:9, 36:19, 37:10, 38:12, 40:10, 40:17, 41:3, 41:11, 42:2, 42:11, 43:2, 43:24, 45:17, 48:3, 49:17, 54:1, 54:10, 56:24, 59:12, 63:10, 64:25, 65:19, 66:6, 66:16, 67:1, 67:11, 68:7, 69:15, 69:22, 71:12, 71:21, 72:6, 72:10, 72:19, 73:12, 73:13, 74:14, 74:18, 89:24, 105:11, 128:3, 129:16, 137:18, 138:6, 177:17, 178:1, 195:4, 195:12, 209:13, 209:16, 210:7, 210:9, 210:12, 211:18</p> <p><b>Honorable</b> <sup>[1]</sup> - 1:19</p> <p><b>hoods</b> <sup>[1]</sup> - 94:3</p> <p><b>hopefully</b> <sup>[1]</sup> - 131:19</p> <p><b>horizon</b> <sup>[1]</sup> - 79:20</p> <p><b>Hospital</b> <sup>[1]</sup> - 76:2</p>	<p><b>hour</b> <sup>[1]</sup> - 200:23</p> <p><b>hours</b> <sup>[3]</sup> - 201:1, 201:7, 201:8</p> <p><b>housing</b> <sup>[1]</sup> - 141:11</p> <p><b>Houston</b> <sup>[48]</sup> - 1:20, 57:24, 63:11, 66:21, 70:25, 75:24, 76:2, 76:4, 76:8, 76:9, 76:12, 76:19, 77:17, 78:2, 80:18, 90:14, 91:1, 92:3, 93:25, 109:9, 109:16, 111:5, 117:13, 117:16, 118:19, 140:22, 141:4, 141:6, 141:10, 148:18, 148:19, 148:23, 149:3, 154:2, 160:9, 163:7, 163:13, 164:21, 166:4, 166:12, 166:25, 168:10, 169:6, 169:9, 174:20, 176:25, 194:15, 215:24</p> <p><b>HOUSTON</b> <sup>[5]</sup> - 2:6, 2:12, 3:6, 3:16, 4:6</p> <p><b>Houston's</b> <sup>[1]</sup> - 58:5</p> <p><b>HUDSON</b> <sup>[1]</sup> - 48:18</p> <p><b>Hudson</b> <sup>[1]</sup> - 48:6</p> <p><b>human</b> <sup>[1]</sup> - 211:6</p> <p><b>hundred</b> <sup>[2]</sup> - 81:11, 201:15</p> <p><b>hundreds</b> <sup>[1]</sup> - 106:11</p> <p><b>hydraulic</b> <sup>[12]</sup> - 140:5, 140:6, 140:11, 141:13, 142:16, 143:8, 144:2, 145:11, 150:10, 150:11, 155:19, 166:8</p> <p><b>hydraulically</b> <sup>[4]</sup> - 108:22, 140:17, 140:24, 144:10</p> <p><b>hydroclone</b> <sup>[1]</sup> - 110:14</p> <p><b>hypothetical</b> <sup>[1]</sup> - 192:18</p>
<b>H</b>			
<p><b>habitat</b> <sup>[2]</sup> - 158:7, 161:12</p> <p><b>half</b> <sup>[3]</sup> - 73:14, 73:19, 134:15</p> <p><b>hand</b> <sup>[2]</sup> - 74:20, 215:17</p> <p><b>handled</b> <sup>[1]</sup> - 91:5</p> <p><b>handling</b> <sup>[10]</sup> - 90:25, 91:2, 96:14, 96:23, 101:21, 102:11, 105:5, 115:24, 199:9, 199:18</p>	<p><b>hatched</b> <sup>[1]</sup> - 127:2</p> <p><b>hate</b> <sup>[1]</sup> - 53:15</p> <p><b>hailed</b> <sup>[5]</sup> - 117:21, 124:15, 127:20, 130:13, 186:3</p> <p><b>hauling</b> <sup>[1]</sup> - 91:13</p> <p><b>Haustein</b> <sup>[1]</sup> - 68:18</p> <p><b>hazardous</b> <sup>[3]</sup> - 42:22, 79:25, 195:14</p> <p><b>HCAD</b> <sup>[2]</sup> - 13:6, 14:4</p> <p><b>head</b> <sup>[9]</sup> - 39:21, 39:23, 79:3, 92:20, 143:11, 145:2, 150:19, 150:22, 179:19</p> <p><b>headed</b> <sup>[1]</sup> - 48:14</p> <p><b>headquartered</b> <sup>[1]</sup> - 77:17</p> <p><b>Health</b> <sup>[9]</sup> - 27:8, 27:12, 36:11, 103:23, 119:13, 126:4, 127:7, 190:15, 208:10</p> <p><b>health</b> <sup>[4]</sup> - 48:21, 49:19, 53:4, 211:6</p> <p><b>Health's</b> <sup>[1]</sup> - 119:7</p> <p><b>hear</b> <sup>[7]</sup> - 32:10, 83:19, 86:25, 87:15, 115:23, 181:11, 196:16</p> <p><b>heard</b> <sup>[13]</sup> - 1:18, 5:6, 81:23, 86:4, 86:24, 92:9, 93:8, 101:2, 117:2, 140:2, 175:23, 179:5</p> <p><b>hearing</b> <sup>[3]</sup> - 99:11, 208:1, 210:16</p> <p><b>hearsay</b> <sup>[9]</sup> - 12:24, 13:5, 13:12, 14:11, 23:6, 55:8, 56:17, 62:16, 65:3</p> <p><b>heavier</b> <sup>[2]</sup> - 112:6, 119:21</p> <p><b>heavily</b> <sup>[1]</sup> - 169:14</p> <p><b>heavy</b> <sup>[4]</sup> - 97:20, 121:17, 121:21, 124:13</p> <p><b>heirs</b> <sup>[3]</sup> - 21:4, 21:9, 21:16</p> <p><b>held</b> <sup>[3]</sup> - 1:19, 133:24, 134:4</p> <p><b>hello</b> <sup>[1]</sup> - 137:22</p> <p><b>help</b> <sup>[1]</sup> - 165:24</p> <p><b>Henderson</b> <sup>[4]</sup> - 96:7, 96:9, 102:24, 120:14</p> <p><b>hereby</b> <sup>[1]</sup> - 215:5</p> <p><b>HGHC</b> <sup>[1]</sup> - 49:25</p> <p><b>high</b> <sup>[7]</sup> - 108:18, 108:19, 110:12, 110:25, 188:19, 192:12, 193:16</p> <p><b>higher</b> <sup>[3]</sup> - 76:9, 113:12, 123:15</p> <p><b>highlight</b> <sup>[1]</sup> - 165:22</p> <p><b>highlighted</b> <sup>[1]</sup> - 17:15</p> <p><b>highlighting</b> <sup>[1]</sup> - 125:2</p> <p><b>Highway</b> <sup>[2]</sup> - 104:3, 174:3</p> <p><b>highways</b> <sup>[1]</sup> - 157:15</p> <p><b>himself</b> <sup>[1]</sup> - 105:5</p>	<p><b>HINTON</b> <sup>[24]</sup> - 4:8, 8:9, 12:16, 13:1, 13:15, 13:23, 14:8, 14:13, 14:19, 15:4, 15:10, 15:15, 16:17, 17:7, 17:18, 18:15, 18:23, 20:4, 20:13, 22:20, 22:25, 23:5, 72:5, 73:11</p> <p><b>hip</b> <sup>[1]</sup> - 74:1</p> <p><b>historical</b> <sup>[7]</sup> - 75:20, 84:14, 117:15, 138:24, 167:7, 167:13, 167:15</p> <p><b>history</b> <sup>[6]</sup> - 132:8, 145:18, 146:15, 154:7, 165:8, 171:7</p> <p><b>HIT</b> <sup>[5]</sup> - 154:2, 162:20, 163:7, 169:24</p> <p><b>hmm</b> <sup>[1]</sup> - 41:25</p> <p><b>hold</b> <sup>[3]</sup> - 111:20, 116:25, 124:5</p> <p><b>home</b> <sup>[1]</sup> - 210:21</p> <p><b>Honor</b> <sup>[82]</sup> - 8:6, 11:2, 11:19, 12:16, 13:1, 14:8, 14:13, 14:19, 14:24, 15:9, 15:20, 15:23, 16:18, 17:18, 18:16, 20:13, 20:25, 22:25, 23:6, 23:25, 25:16, 28:10, 28:25, 31:17, 31:22, 32:1, 32:15, 33:13, 34:9, 36:19, 37:10, 38:12, 40:10, 40:17, 41:3, 41:11, 42:2, 42:11, 43:2, 43:24, 45:17, 48:3, 49:17, 54:1, 54:10, 56:24, 59:12, 63:10, 64:25, 65:19, 66:6, 66:16, 67:1, 67:11, 68:7, 69:15, 69:22, 71:12, 71:21, 72:6, 72:10, 72:19, 73:12, 73:13, 74:14, 74:18, 89:24, 105:11, 128:3, 129:16, 137:18, 138:6, 177:17, 178:1, 195:4, 195:12, 209:13, 209:16, 210:7, 210:9, 210:12, 211:18</p> <p><b>Honorable</b> <sup>[1]</sup> - 1:19</p> <p><b>hoods</b> <sup>[1]</sup> - 94:3</p> <p><b>hopefully</b> <sup>[1]</sup> - 131:19</p> <p><b>horizon</b> <sup>[1]</sup> - 79:20</p> <p><b>Hospital</b> <sup>[1]</sup> - 76:2</p>	<p><b>hour</b> <sup>[1]</sup> - 200:23</p> <p><b>hours</b> <sup>[3]</sup> - 201:1, 201:7, 201:8</p> <p><b>housing</b> <sup>[1]</sup> - 141:11</p> <p><b>Houston</b> <sup>[48]</sup> - 1:20, 57:24, 63:11, 66:21, 70:25, 75:24, 76:2, 76:4, 76:8, 76:9, 76:12, 76:19, 77:17, 78:2, 80:18, 90:14, 91:1, 92:3, 93:25, 109:9, 109:16, 111:5, 117:13, 117:16, 118:19, 140:22, 141:4, 141:6, 141:10, 148:18, 148:19, 148:23, 149:3, 154:2, 160:9, 163:7, 163:13, 164:21, 166:4, 166:12, 166:25, 168:10, 169:6, 169:9, 174:20, 176:25, 194:15, 215:24</p> <p><b>HOUSTON</b> <sup>[5]</sup> - 2:6, 2:12, 3:6, 3:16, 4:6</p> <p><b>Houston's</b> <sup>[1]</sup> - 58:5</p> <p><b>HUDSON</b> <sup>[1]</sup> - 48:18</p> <p><b>Hudson</b> <sup>[1]</sup> - 48:6</p> <p><b>human</b> <sup>[1]</sup> - 211:6</p> <p><b>hundred</b> <sup>[2]</sup> - 81:11, 201:15</p> <p><b>hundreds</b> <sup>[1]</sup> - 106:11</p> <p><b>hydraulic</b> <sup>[12]</sup> - 140:5, 140:6, 140:11, 141:13, 142:16, 143:8, 144:2, 145:11, 150:10, 150:11, 155:19, 166:8</p> <p><b>hydraulically</b> <sup>[4]</sup> - 108:22, 140:17, 140:24, 144:10</p> <p><b>hydroclone</b> <sup>[1]</sup> - 110:14</p> <p><b>hypothetical</b> <sup>[1]</sup> - 192:18</p>
			<b>I</b>
			<p><b>I-10</b> <sup>[5]</sup> - 148:7, 165:17, 174:3, 174:9, 174:13</p> <p><b>idea</b> <sup>[5]</sup> - 109:25, 171:8, 183:8, 190:20, 201:3</p> <p><b>ideal</b> <sup>[3]</sup> - 101:6, 104:5, 106:8</p> <p><b>identified</b> <sup>[6]</sup> - 15:18,</p>

67:16, 127:3, 153:23, 174:23, 203:20 <b>identifies</b> [2] - 36:4, 104:2 <b>identify</b> [6] - 67:16, 86:11, 146:1, 162:17, 184:6 <b>II</b> [3] - 90:16, 162:23, 163:4 <b>imagine</b> [2] - 7:10, 7:25 <b>immediate</b> [1] - 174:8 <b>immediately</b> [3] - 55:1, 133:1 <b>impact</b> [3] - 167:3, 202:19, 202:23 <b>impacted</b> [2] - 203:3, 204:11 <b>impacting</b> [1] - 202:2 <b>impacts</b> [2] - 156:11, 167:9 <b>impaired</b> [2] - 52:22, 54:3 <b>impermeable</b> [2] - 123:23 <b>implementing</b> [2] - 79:23, 126:6 <b>implies</b> [1] - 39:14 <b>importance</b> [1] - 149:15 <b>important</b> [3] - 44:12, 118:21, 122:18 <b>importantly</b> [1] - 91:17 <b>imposing</b> [1] - 136:1 <b>impossible</b> [2] - 101:10, 104:12 <b>impoundment</b> [41] - 107:12, 107:16, 107:20, 107:25, 108:1, 108:3, 109:1, 109:13, 109:15, 111:8, 111:12, 111:25, 112:14, 112:23, 113:10, 115:14, 116:5, 116:6, 116:9, 116:15, 124:4, 126:19, 127:19, 128:6, 128:11, 128:14, 128:16, 128:22, 130:14, 132:4, 170:5, 184:2, 184:5, 184:13, 184:23, 193:20, 193:22, 194:1, 194:5, 202:7, 204:11 <b>impoundments</b> [17] - 81:17, 85:1, 133:2, 178:24, 188:15,	189:21, 190:2, 192:9, 192:12, 192:17, 193:23, 200:13, 203:4, 203:21, 204:1, 206:17, 207:2 <b>impression</b> [3] - 52:21, 98:5, 103:9 <b>improper</b> [6] - 26:18, 27:14, 27:17, 27:22, 30:2, 30:4 <b>improperly</b> [1] - 25:11 <b>IN</b> [1] - 1:4 <b>inactive</b> [1] - 166:3 <b>inadvertently</b> [1] - 59:14 <b>INC</b> [4] - 1:10, 1:11, 3:4, 3:4 <b>incarnation</b> [1] - 154:22 <b>incentive</b> [1] - 25:21 <b>inches</b> [1] - 146:14 <b>include</b> [2] - 40:18, 137:11 <b>included</b> [2] - 67:2, 215:9 <b>includes</b> [5] - 41:9, 137:9, 140:20, 143:5, 156:9 <b>including</b> [5] - 23:13, 37:12, 69:12, 119:13, 201:6 <b>incompatible</b> [1] - 119:2 <b>inconsistent</b> [1] - 22:12 <b>incorporates</b> [1] - 72:12 <b>incorrect</b> [1] - 27:15 <b>increase</b> [1] - 172:4 <b>Indian</b> [1] - 156:10 <b>indicate</b> [4] - 147:10, 149:10, 165:5, 170:16 <b>indicated</b> [2] - 107:5, 159:6 <b>indicates</b> [4] - 37:17, 147:17, 154:24, 156:12 <b>indicating</b> [10] - 7:1, 49:20, 76:3, 116:4, 126:23, 148:12, 168:8, 169:15, 184:2, 205:6 <b>indicating</b> [8] - 126:21, 148:7, 148:8, 148:15, 162:21, 163:5, 169:15, 184:8 <b>indication</b> [5] - 129:7,	157:20, 163:16, 204:16, 204:18 <b>indispensable</b> [2] - 1:6, 73:4 <b>individually</b> [2] - 32:8, 68:8 <b>Industrial</b> [8] - 16:20, 68:21, 69:5, 129:21, 135:4, 135:6, 212:8, 212:23 <b>INDUSTRIAL</b> [2] - 1:9, 4:4 <b>industrial</b> [8] - 79:20, 79:24, 80:15, 81:9, 81:15, 87:11, 91:14, 120:20 <b>industries</b> [1] - 92:4 <b>industry</b> [7] - 80:12, 90:15, 92:16, 174:14, 197:5, 197:11 <b>inert</b> [4] - 41:15, 41:17, 41:18, 41:22 <b>inflamm</b> [1] - 102:17 <b>inflamm</b> [1] - 27:9 <b>informal</b> [1] - 9:17 <b>Information</b> [2] - 18:24, 19:12 <b>information</b> [18] - 10:1, 14:24, 16:12, 16:25, 19:5, 19:9, 28:1, 28:4, 28:6, 35:22, 47:2, 83:13, 99:4, 134:20, 139:4, 173:25, 177:7, 205:4 <b>informed</b> [1] - 155:4 <b>initial</b> [2] - 112:24, 180:21 <b>initiated</b> [2] - 54:7, 54:8 <b>initiation</b> [1] - 32:22 <b>inorganic</b> [4] - 119:18, 119:19, 120:5, 191:10 <b>inorganics</b> [2] - 110:5, 125:19 <b>inside</b> [3] - 154:6, 189:12, 189:21 <b>insoluble</b> [1] - 125:19 <b>inspected</b> [1] - 97:13 <b>inspection</b> [2] - 69:9, 71:5 <b>inspections</b> [2] - 129:13, 204:9 <b>inspector</b> [1] - 127:3 <b>instance</b> [5] - 8:18, 21:23, 140:16, 143:13, 203:20 <b>instances</b> [1] - 93:23 <b>instead</b> [1] - 73:2	<b>instructed</b> [4] - 71:25, 72:7, 72:13, 72:14 <b>instruction</b> [2] - 198:23, 199:4 <b>instructions</b> [2] - 8:2, 22:9 <b>insufficient</b> [1] - 116:24 <b>intact</b> [2] - 168:21, 191:20 <b>integrity</b> [1] - 192:16 <b>intend</b> [2] - 101:7, 104:6 <b>intended</b> [4] - 8:21, 8:25, 10:7, 67:13 <b>intending</b> [2] - 13:7, 180:14 <b>intends</b> [1] - 104:7 <b>intention</b> [2] - 115:13, 200:12 <b>intentionally</b> [1] - 128:21 <b>interchangeably</b> [1] - 132:16 <b>interest</b> [7] - 9:21, 19:21, 19:23, 30:20, 30:21, 31:12, 73:25 <b>interested</b> [4] - 94:23, 141:25, 156:8, 156:10 <b>intermediate</b> [1] - 109:6 <b>internal</b> [1] - 116:3 <b>International</b> [19] - 5:9, 5:24, 6:2, 6:10, 8:22, 71:21, 71:25, 72:11, 72:20, 85:23, 86:11, 86:18, 87:20, 88:20, 89:6, 154:2, 168:10, 194:15, 196:18 <b>international</b> [15] - 79:4, 148:18, 148:20, 148:24, 149:3, 160:10, 163:7, 164:21, 166:4, 166:12, 166:25, 169:6, 169:10, 174:20, 176:25 <b>INTERNATIONAL</b> [2] - 1:9, 3:14 <b>interpret</b> [3] - 85:2, 85:6, 162:24 <b>interpretation</b> [4] - 85:12, 86:20, 213:7, 214:4 <b>interpreting</b> [4] - 56:19, 58:19, 58:22, 213:18	<b>interrupt</b> [1] - 190:12 <b>interstate</b> [1] - 174:2 <b>intracoastal</b> [1] - 140:18 <b>introduce</b> [1] - 22:6 <b>introduced</b> [1] - 16:5 <b>introduction</b> [1] - 65:15 <b>inundated</b> [7] - 188:16, 189:7, 189:13, 189:15, 192:12, 206:9, 206:10 <b>investigate</b> [1] - 164:12 <b>investigating</b> [1] - 71:2 <b>investigation</b> [17] - 18:17, 21:13, 24:25, 25:12, 43:21, 71:2, 75:14, 84:19, 96:2, 128:9, 130:10, 132:13, 133:23, 134:17, 165:13, 165:19, 165:25 <b>investigator</b> [5] - 120:10, 120:17, 122:16, 125:3, 126:3 <b>involved</b> [10] - 32:22, 47:20, 81:25, 82:23, 130:8, 130:11, 145:23, 155:21, 164:25, 177:8 <b>involvement</b> [4] - 82:8, 84:16, 98:9, 151:8 <b>involves</b> [1] - 62:15 <b>involving</b> [2] - 80:6, 82:1 <b>IP</b> [2] - 34:10, 85:22 <b>IP's</b> [2] - 5:16, 8:19 <b>ironic</b> [1] - 26:25 <b>is..</b> [1] - 14:18 <b>issuance</b> [2] - 161:8, 163:23 <b>issue</b> [55] - 5:13, 6:7, 6:25, 7:9, 7:11, 7:17, 7:18, 8:19, 8:20, 9:15, 9:22, 12:15, 14:1, 14:3, 17:20, 18:3, 19:14, 20:10, 22:1, 22:2, 22:10, 23:11, 23:14, 25:9, 27:17, 31:15, 32:2, 40:13, 42:25, 43:17, 44:7, 45:3, 49:10, 53:13, 54:15, 59:24, 72:18, 72:22, 93:16, 133:25, 134:18, 156:14, 171:7,
---	---	---	---	--

<p>178:7, 178:14, 179:4, 179:22, 181:18, 181:20, 187:8, 187:19, 196:20, 211:16, 213:7, 214:2</p> <p><b>issued</b> [5] - 62:10, 153:15, 156:20, 158:19, 158:20</p> <p><b>issues</b> [21] - 5:20, 8:1, 8:4, 8:17, 16:8, 17:16, 20:1, 22:3, 48:25, 50:3, 70:13, 77:18, 77:20, 80:16, 84:18, 93:5, 154:9, 178:25, 180:18, 182:20, 182:23</p> <p><b>itself</b> [10] - 45:5, 56:12, 97:17, 105:18, 106:19, 144:1, 188:4, 194:24, 204:24, 209:25</p>	<p>157:8, 166:16, 169:4, 205:21</p> <p><b>jet</b> [2] - 108:17, 110:12</p> <p><b>jettied</b> [1] - 123:17</p> <p><b>jetting</b> [2] - 123:4, 124:15</p> <p><b>Jim</b> [1] - 102:24</p> <p><b>JOHN</b> [1] - 2:9</p> <p><b>Johns</b> [1] - 178:1</p> <p><b>joined</b> [4] - 8:15, 8:20, 10:14, 74:1</p> <p><b>joins</b> [4] - 72:4, 72:5, 73:10, 73:11</p> <p><b>joint</b> [1] - 154:20</p> <p><b>jointly</b> [1] - 134:21</p> <p><b>Joseph's</b> [1] - 76:2</p> <p><b>JPMORGAN</b> [1] - 2:5</p> <p><b>judge</b> [5] - 157:4, 163:12, 179:13, 207:22, 212:5</p> <p><b>Judge</b> [3] - 1:19, 27:2, 54:13</p> <p><b>judgment</b> [3] - 73:18, 73:21, 74:6</p> <p><b>JUDICIAL</b> [1] - 1:11</p> <p><b>July</b> [9] - 68:4, 68:20, 68:23, 152:3, 212:7, 212:19, 213:5, 214:1</p> <p><b>June</b> [9] - 35:12, 103:19, 151:2, 192:14, 193:14, 193:17, 193:19, 198:24, 208:6</p> <p><b>jurisdiction</b> [1] - 151:11</p> <p><b>jury</b> [45] - 5:4, 15:12, 17:16, 21:7, 24:1, 24:6, 24:11, 24:23, 25:20, 26:9, 27:4, 27:9, 28:22, 29:13, 30:15, 40:14, 53:20, 66:4, 69:21, 81:23, 99:11, 127:21, 127:24, 130:2, 136:5, 138:9, 138:22, 140:2, 142:8, 142:11, 143:24, 171:25, 177:19, 178:22, 179:1, 182:15, 191:8, 195:8, 198:3, 208:1, 210:16, 210:24, 213:8, 213:11, 213:17</p> <p><b>Jury</b> [5] - 70:10, 71:18, 74:15, 177:22, 182:25</p>	<p><b>K</b></p> <p><b>KAIM</b> [1] - 3:9</p> <p><b>keep</b> [9] - 29:12, 52:1, 52:2, 53:15, 56:11, 59:10, 59:15, 66:2, 66:4</p> <p><b>Ken</b> [2] - 62:18, 62:21</p> <p><b>kept</b> [3] - 28:25, 72:22, 94:21</p> <p><b>Kidd</b> [3] - 215:3, 215:21, 215:21</p> <p><b>kills</b> [1] - 27:6</p> <p><b>Kim</b> [1] - 69:7</p> <p><b>Kimberly</b> [3] - 215:3, 215:21, 215:21</p> <p><b>kind</b> [36] - 12:15, 24:6, 29:13, 33:23, 48:4, 48:9, 76:22, 95:13, 103:1, 106:20, 109:24, 112:19, 113:19, 114:24, 115:3, 119:1, 123:12, 125:14, 126:20, 139:1, 139:3, 142:14, 143:3, 145:22, 146:11, 147:24, 148:7, 150:11, 155:5, 155:13, 165:7, 184:8, 198:7, 207:6, 209:10</p> <p><b>kinds</b> [6] - 92:17, 119:25, 141:12, 155:7, 171:10, 191:25</p> <p><b>knowing</b> [2] - 27:11, 200:5</p> <p><b>knowledge</b> [11] - 18:19, 35:10, 39:22, 81:14, 84:15, 84:19, 98:8, 98:9, 105:6, 167:17, 174:12</p> <p><b>known</b> [4] - 76:20, 110:8, 118:22, 152:16</p> <p><b>kraft</b> [8] - 196:3, 196:4, 196:5, 196:11, 196:12, 197:10, 197:18</p>	<p>71:14, 75:4, 177:20, 210:18</p> <p><b>Lafarge</b> [5] - 159:11, 159:17, 159:18, 161:2, 165:1</p> <p><b>lagoon</b> [3] - 114:18, 118:13, 145:15</p> <p><b>land</b> [12] - 105:21, 106:19, 106:25, 113:11, 113:15, 124:2, 124:20, 124:24, 147:13, 157:14, 204:19, 204:24</p> <p><b>landfill</b> [1] - 36:7</p> <p><b>landowner</b> [1] - 172:23</p> <p><b>language</b> [7] - 6:4, 6:17, 6:20, 104:13, 104:15, 187:13, 212:10</p> <p><b>large</b> [8] - 91:2, 120:2, 141:5, 146:13, 146:14, 154:14, 158:4, 197:9</p> <p><b>larger</b> [3] - 19:19, 80:23, 178:14</p> <p><b>largest</b> [1] - 177:5</p> <p><b>Larry</b> [1] - 68:5</p> <p><b>last</b> [16] - 67:12, 81:5, 121:11, 126:6, 126:8, 129:9, 136:23, 149:7, 161:13, 172:14, 172:16, 178:19, 185:17, 188:2, 190:4, 201:14</p> <p><b>lasted</b> [1] - 78:9</p> <p><b>late</b> [3] - 79:15, 91:18</p> <p><b>lately</b> [1] - 198:19</p> <p><b>latter</b> [1] - 198:1</p> <p><b>laughing</b> [2] - 63:16, 63:18</p> <p><b>launched</b> [1] - 78:14</p> <p><b>Lauren</b> [1] - 48:6</p> <p><b>law</b> [5] - 6:18, 9:9, 9:10, 73:24, 83:1</p> <p><b>laws</b> [2] - 79:23, 91:18</p> <p><b>lawsuit</b> [22] - 18:6, 18:20, 19:9, 19:10, 19:12, 19:18, 21:25, 25:3, 25:11, 26:19, 27:13, 27:18, 27:21, 27:24, 29:7, 30:7, 30:25, 31:7, 31:9, 32:23, 182:3, 182:4</p> <p><b>lawyer</b> [8] - 26:1, 29:15, 30:11, 30:13, 30:21, 31:1, 31:14, 206:23</p>	<p><b>lawyer-driven</b> [1] - 31:14</p> <p><b>lawyers</b> [1] - 30:20</p> <p><b>lay</b> [3] - 106:25, 113:11, 113:15</p> <p><b>lead</b> [1] - 45:2</p> <p><b>leads</b> [1] - 144:13</p> <p><b>learned</b> [1] - 196:10</p> <p><b>least</b> [8] - 173:3, 189:8, 196:1, 196:14, 197:20, 203:13, 203:22, 206:12</p> <p><b>leave</b> [10] - 77:24, 101:22, 102:7, 178:2, 199:11, 199:16, 200:3, 200:6, 200:9, 207:15</p> <p><b>leaving</b> [1] - 104:19</p> <p><b>left</b> [4] - 78:1, 142:14, 143:23, 178:5</p> <p><b>legal</b> [23] - 11:9, 11:22, 12:3, 12:8, 14:12, 14:18, 14:22, 15:16, 17:25, 56:17, 72:22, 89:25, 90:1, 105:12, 105:13, 105:14, 135:16, 135:18, 187:22, 187:24, 213:4, 213:7, 213:14</p> <p><b>legislature</b> [2] - 136:17, 152:11</p> <p><b>less</b> [1] - 197:14</p> <p><b>letter</b> [93] - 9:23, 9:24, 10:2, 13:9, 14:6, 14:20, 14:21, 16:15, 16:19, 17:3, 17:6, 17:8, 17:11, 17:20, 18:4, 18:9, 18:13, 18:19, 18:22, 19:2, 19:8, 19:21, 20:18, 21:6, 22:11, 22:15, 22:18, 22:19, 34:18, 35:12, 37:22, 39:25, 56:25, 57:3, 58:10, 58:15, 58:20, 58:22, 59:11, 62:18, 62:19, 62:20, 62:21, 62:24, 65:6, 68:4, 68:12, 68:16, 68:20, 68:23, 69:2, 70:22, 95:10, 100:21, 100:25, 101:18, 103:6, 103:7, 103:9, 103:10, 103:19, 103:20, 103:22, 103:25, 151:1, 151:16, 159:10, 159:20, 160:19,</p>
<p><b>J</b></p> <p><b>Jacinto</b> [24] - 69:9, 97:10, 104:3, 145:24, 148:14, 154:6, 164:18, 165:17, 166:2, 174:2, 174:9, 177:4, 186:1, 189:7, 189:10, 189:13, 191:2, 191:18, 194:11, 195:1, 195:3, 203:6, 203:11, 206:10</p> <p><b>Jack</b> [20] - 142:6, 148:21, 151:16, 151:20, 152:4, 154:25, 155:11, 158:15, 159:20, 164:21, 167:3, 170:19, 170:23, 174:19, 174:21, 175:12, 175:15, 176:5, 176:9, 210:4</p> <p><b>Jack's</b> [4] - 159:23, 168:11, 169:10, 175:3</p> <p><b>January</b> [5] - 57:17, 154:18, 167:23, 170:11, 170:17</p> <p><b>Jenn</b> [20] - 81:19, 84:4, 85:8, 86:3, 86:23, 89:2, 95:21, 98:16, 107:3, 125:24, 138:3, 142:4, 143:18, 145:9, 147:9, 152:1,</p>				
		<p><b>L</b></p> <p><b>labeled</b> [2] - 67:21, 68:18</p> <p><b>laboratory</b> [2] - 78:10, 78:11</p> <p><b>labs</b> [1] - 94:3</p> <p><b>lack</b> [2] - 36:4, 39:21</p> <p><b>ladies</b> [5] - 70:15,</p>		

170:10, 173:13,  
173:16, 175:7,  
175:11, 176:8,  
176:12, 198:6,  
198:7, 198:8,  
198:14, 198:17,  
198:20, 198:24,  
199:3, 199:6,  
199:17, 199:21,  
199:22, 200:15,  
205:13, 205:19,  
209:2, 209:4  
**letterhead** [4] - 40:1,  
69:3, 103:21, 103:23  
**letters** [14] - 16:13,  
59:2, 95:10, 104:21,  
158:3, 197:23,  
198:10, 198:15,  
198:16, 198:22,  
199:24, 200:1,  
208:6, 208:19  
**letting** [1] - 200:3  
**levees** [6] - 132:3,  
132:5, 132:11,  
132:14, 132:16,  
132:24  
**level** [12] - 37:24,  
38:20, 38:22, 38:23,  
53:11, 53:12, 53:13,  
79:22, 93:15,  
112:11, 112:12,  
155:17  
**levels** [5] - 47:17,  
50:13, 52:21, 53:10,  
172:4  
**LEWIS** [1] - 3:15  
**liability** [1] - 29:22  
**liable** [1] - 82:10  
**life** [5] - 26:16, 76:1,  
76:4, 122:24, 178:11  
**light** [1] - 138:24  
**likely** [2] - 123:13,  
176:20  
**likewise** [1] - 56:7  
**lime** [2] - 110:6,  
119:20  
**limine** [2] - 182:12,  
182:13  
**limit** [1] - 158:5  
**limited** [10] - 15:8,  
22:3, 38:12, 38:13,  
38:20, 38:23,  
159:24, 161:1,  
162:10, 199:5  
**limiting** [1] - 22:9  
**Lincoln** [1] - 76:5  
**line** [41] - 11:11, 12:6,  
14:7, 14:10, 22:21,  
23:9, 31:23, 31:24,  
33:12, 34:4, 35:6,

37:7, 37:20, 41:1,  
46:19, 49:21, 52:12,  
53:6, 53:7, 56:22,  
57:1, 57:5, 57:12,  
57:13, 57:15, 57:23,  
58:3, 58:14, 58:20,  
59:10, 75:9, 90:4,  
113:20, 155:21,  
165:10, 176:14,  
180:10  
**Line** [14] - 11:12, 12:7,  
22:23, 29:6, 34:6,  
35:11, 40:7, 40:22,  
43:10, 46:20, 53:23,  
61:15, 61:18, 64:3  
**lines** [38] - 10:25,  
12:13, 12:23, 22:21,  
28:25, 31:18, 32:18,  
33:4, 33:8, 33:11,  
35:18, 35:23, 38:25,  
39:1, 40:7, 43:3,  
43:5, 43:14, 45:8,  
45:10, 45:19, 47:5,  
47:8, 47:9, 47:10,  
47:12, 47:24, 50:7,  
53:1, 54:11, 58:19,  
61:24, 65:20, 66:1,  
67:2, 67:5, 169:22,  
178:21  
**liquid** [11] - 90:17,  
101:22, 102:6,  
104:18, 199:4,  
199:10, 199:16,  
200:3, 200:6, 200:8,  
200:13  
**liquids** [1] - 102:7  
**list** [6] - 13:19, 15:20,  
55:19, 156:25  
**listed** [4] - 42:22,  
157:11, 157:14,  
163:19  
**listen** [1] - 27:10  
**litigation** [2] - 25:19,  
26:1  
**live** [2] - 72:22, 76:5  
**lived** [3] - 75:24, 76:1,  
76:4  
**living** [1] - 75:6  
**LLP** [5] - 2:4, 3:5,  
3:15, 3:21, 4:5  
**Load** [1] - 70:24  
**load** [2] - 118:12,  
123:18  
**loaded** [5] - 51:21,  
109:15, 111:3, 111:7  
**loading** [1] - 49:10  
**loads** [1] - 118:14  
**local** [6] - 37:24,  
38:20, 38:22, 38:23,  
93:15, 156:9

**locally** [2] - 38:1,  
141:13  
**locate** [1] - 103:5  
**located** [2] - 144:9,  
204:19  
**location** [21] - 77:9,  
98:4, 98:5, 100:23,  
103:13, 104:2,  
106:14, 119:1,  
132:18, 132:23,  
133:1, 147:7, 148:5,  
165:16, 173:2,  
174:25, 175:1,  
175:4, 175:5,  
175:18, 199:25  
**locations** [2] - 148:11,  
197:15  
**look** [43] - 5:13, 6:7,  
12:24, 32:10, 32:11,  
32:16, 34:2, 37:19,  
44:22, 54:7, 57:10,  
57:23, 63:6, 75:12,  
75:20, 85:15,  
103:16, 117:15,  
125:14, 126:10,  
131:9, 154:17,  
159:7, 159:19,  
160:6, 164:14,  
167:16, 167:22,  
168:2, 169:5, 170:9,  
171:13, 172:11,  
172:14, 172:21,  
175:9, 175:10,  
183:20, 198:16,  
198:18, 201:16,  
213:22  
**looked** [24] - 33:18,  
74:3, 103:10, 110:4,  
117:4, 121:1,  
125:10, 125:11,  
139:6, 147:4, 167:2,  
167:6, 167:7,  
171:11, 183:15,  
188:6, 192:3,  
194:19, 194:22,  
198:1, 198:3,  
198:19, 202:18,  
205:12  
**looking** [35] - 19:21,  
33:22, 34:1, 57:7,  
57:9, 57:13, 99:21,  
114:18, 139:7,  
142:12, 143:22,  
144:20, 152:20,  
152:22, 158:11,  
161:5, 161:13,  
161:21, 162:6,  
163:14, 165:4,  
169:7, 170:22,  
171:4, 171:6,

171:17, 172:2,  
172:17, 172:18,  
173:9, 175:19,  
176:4, 180:6,  
194:20, 194:23  
**looks** [4] - 44:6, 56:20,  
143:21, 202:14  
**loss** [2] - 158:7,  
189:18  
**lost** [1] - 113:23  
**LOUISIANA** [3] - 3:6,  
3:15, 4:6  
**low** [10] - 122:4,  
122:7, 122:21,  
123:24, 123:25,  
124:1, 155:17,  
155:21, 155:22,  
173:4  
**lower** [9] - 112:17,  
113:6, 113:7, 113:9,  
114:2, 114:24,  
126:17, 128:7  
**lowered** [2] - 142:20,  
144:10  
**lowers** [1] - 144:4  
**lunch** [2] - 66:3, 70:9

## M

**machine** [1] - 1:21  
**magnitude** [1] -  
196:14  
**mail** [2] - 171:17,  
171:18  
**mailed** [1] - 157:6  
**mailing** [2] - 171:24,  
172:13  
**mails** [1] - 173:17  
**main** [1] - 178:25  
**maintain** [6] - 75:18,  
78:17, 85:15, 85:19,  
85:20, 135:13  
**maintained** [2] -  
80:10, 80:24  
**maintaining** [3] -  
86:10, 86:19, 91:22  
**MAINTENANCE** [2] -  
1:10, 4:4  
**Maintenance** [8] -  
16:20, 68:21, 69:5,  
129:22, 135:4,  
135:6, 212:9, 212:24  
**maintenance** [16] -  
87:19, 87:25, 88:6,  
88:12, 88:21, 89:6,  
91:10, 91:12, 91:15,  
129:13, 135:23,  
137:2, 152:24,  
158:16, 168:12,  
174:16

**major** [1] - 195:2  
**manage** [3] - 98:11,  
99:25, 152:10  
**managed** [3] - 98:4,  
109:10, 138:17  
**management** [21] -  
79:25, 81:10, 92:17,  
96:11, 106:2,  
106:22, 106:23,  
107:7, 107:9,  
107:10, 107:13,  
108:7, 108:9, 109:7,  
109:11, 111:24,  
115:16, 126:24,  
138:10, 138:11,  
138:15  
**MANAGEMENT** [4] -  
1:10, 1:11, 3:4, 3:4  
**Management** [16] -  
6:12, 6:23, 7:4, 8:22,  
9:11, 26:22, 26:23,  
68:24, 69:3, 72:3,  
72:10, 73:9, 138:13,  
139:9, 139:23, 192:4  
**Management's** [1] -  
138:17  
**manager** [4] - 77:14,  
77:21, 96:9, 96:10  
**managing** [3] - 80:15,  
93:4, 99:21  
**manner** [2] - 101:21,  
199:10  
**manufacturing** [1] -  
77:16  
**map** [3] - 58:21, 126:9,  
153:19  
**marathon** [7] - 77:16,  
77:25, 78:2, 78:4,  
78:11, 78:13, 94:16  
**March** [4] - 57:15,  
57:25, 95:25, 96:5  
**mark** [1] - 65:9  
**MARK** [1] - 3:9  
**Mark** [1] - 178:1  
**marshall** [1] - 69:4  
**mARY** [1] - 2:21  
**material** [75] - 18:25,  
41:21, 92:1, 102:7,  
106:13, 107:18,  
108:16, 110:4,  
110:5, 110:10,  
110:13, 110:15,  
111:3, 112:8, 114:9,  
118:25, 119:15,  
120:5, 120:6,  
120:11, 120:12,  
120:19, 120:23,  
121:3, 121:10,  
121:20, 121:25,  
122:3, 122:7, 122:9,

<p>122:14, 122:21, 122:22, 123:3, 123:19, 124:5, 124:18, 125:4, 125:9, 125:13, 125:14, 125:18, 125:20, 127:16, 132:13, 132:19, 140:14, 141:2, 141:8, 141:12, 142:20, 142:25, 143:7, 145:3, 145:16, 147:25, 149:19, 150:2, 150:14, 153:1, 176:24, 177:1, 178:16, 180:6, 185:1, 185:6, 186:3, 186:12, 187:4, 189:9, 189:11, 189:14, 189:21, 190:15</p> <p><b>materials</b> [25] - 90:17, 91:9, 97:9, 118:6, 119:18, 119:19, 119:22, 119:23, 119:25, 120:20, 132:17, 140:7, 140:8, 140:21, 141:23, 143:13, 145:13, 150:4, 177:2, 186:7, 186:22, 186:25, 187:2, 191:10, 194:20</p> <p><b>math</b> [2] - 201:10, 201:11</p> <p><b>matter</b> [8] - 38:2, 38:19, 73:24, 80:17, 92:16, 104:4, 201:1, 214:3</p> <p><b>matters</b> [3] - 71:16, 134:18, 177:18</p> <p><b>matting</b> [2] - 121:15, 121:17</p> <p><b>Maximum</b> [1] - 70:24</p> <p><b>mayor</b> [1] - 163:15</p> <p><b>McGinnes</b> [32] - 12:17, 12:19, 13:4, 16:20, 21:4, 21:9, 21:16, 69:5, 121:12, 121:13, 121:20, 123:13, 129:21, 130:23, 131:24, 134:8, 134:10, 134:25, 135:3, 135:6, 135:10, 147:14, 148:10, 148:13, 153:20, 153:23, 153:24,</p>	<p>154:1, 184:18, 187:13, 212:8, 212:23</p> <p><b>MCGINNES</b> [2] - 1:9, 4:4</p> <p><b>McKinney</b> [1] - 68:5</p> <p><b>MCL</b> [1] - 53:13</p> <p><b>mean</b> [22] - 25:13, 32:25, 33:20, 34:23, 49:10, 52:6, 52:19, 56:19, 63:9, 90:11, 122:2, 150:1, 155:22, 181:13, 186:11, 187:2, 188:19, 192:12, 193:16, 201:5, 204:22, 204:25</p> <p><b>meandering</b> [1] - 148:14</p> <p><b>meaning</b> [5] - 5:22, 28:21, 30:22, 179:17, 182:15</p> <p><b>means</b> [8] - 38:18, 53:11, 64:19, 122:23, 144:3, 186:12, 186:23, 187:1</p> <p><b>meant</b> [2] - 9:4, 148:25</p> <p><b>meantime</b> [1] - 161:6</p> <p><b>measurement</b> [1] - 189:25</p> <p><b>mechanism</b> [1] - 207:11</p> <p><b>mechanisms</b> [2] - 207:13, 207:16</p> <p><b>meet</b> [2] - 94:8, 119:24</p> <p><b>meeting</b> [1] - 40:19</p> <p><b>meetings</b> [8] - 47:1, 47:15, 47:16, 47:19, 47:21, 47:25, 50:10, 50:12</p> <p><b>Mega</b> [4] - 164:17, 164:20, 172:22, 204:7</p> <p><b>MELANIE</b> [1] - 4:8</p> <p><b>members</b> [1] - 82:19</p> <p><b>memo</b> [4] - 14:15, 15:2, 97:24, 190:16</p> <p><b>memorandum</b> [2] - 96:20, 164:15</p> <p><b>memory</b> [2] - 10:13, 96:15</p> <p><b>mention</b> [1] - 27:8</p> <p><b>mentioned</b> [8] - 41:5, 69:18, 84:8, 97:6, 108:10, 119:16, 141:9, 159:13</p> <p><b>met</b> [4] - 17:25, 93:23, 171:21, 183:5</p>	<p><b>metallic</b> [1] - 94:18</p> <p><b>method</b> [5] - 96:13, 96:23, 97:8, 97:20, 97:25</p> <p><b>Mexico</b> [2] - 80:21, 91:2</p> <p><b>mid</b> [2] - 89:13, 90:7</p> <p><b>middle</b> [6] - 106:20, 107:23, 113:21, 121:24, 125:25, 126:24</p> <p><b>might</b> [12] - 44:14, 55:13, 55:14, 119:2, 144:15, 150:18, 150:19, 158:5, 171:8, 191:6, 192:7, 197:15</p> <p><b>mile</b> [2] - 111:6</p> <p><b>miles</b> [2] - 76:3, 76:6</p> <p><b>mill</b> [22] - 85:1, 107:21, 109:17, 110:9, 111:16, 111:24, 115:5, 116:13, 116:22, 117:21, 118:8, 119:17, 123:6, 127:20, 182:4, 190:1, 190:22, 194:11, 195:21, 196:10, 206:17, 207:2</p> <p><b>mill's</b> [1] - 108:14</p> <p><b>million</b> [2] - 155:18, 155:25</p> <p><b>mills</b> [7] - 195:24, 196:3, 196:11, 196:12, 197:1, 197:6, 197:10</p> <p><b>MIMC</b> [30] - 7:12, 8:23, 12:15, 18:1, 18:14, 19:19, 20:19, 20:21, 21:12, 21:14, 26:23, 72:5, 72:7, 73:11, 129:21, 130:7, 130:8, 130:11, 130:23, 131:2, 131:16, 133:6, 133:9, 133:17, 135:13, 137:10, 137:11, 184:16, 185:14, 197:24</p> <p><b>MIMC's</b> [7] - 7:6, 9:18, 9:21, 10:10, 19:25, 133:3, 184:13</p> <p><b>mind</b> [6] - 53:1, 167:24, 177:23, 182:22, 201:24, 211:20</p> <p><b>mine</b> [3] - 59:22, 88:25, 150:7</p>	<p><b>mined</b> [1] - 173:2</p> <p><b>mining</b> [4] - 172:3, 172:19, 172:22, 174:10</p> <p><b>minor</b> [1] - 129:2</p> <p><b>minute</b> [9] - 8:7, 45:9, 63:23, 89:9, 89:11, 101:15, 182:22, 207:23, 210:14</p> <p><b>minutes</b> [5] - 185:12, 185:14, 185:20, 187:14, 187:16</p> <p><b>misleading</b> [2] - 39:9, 49:8</p> <p><b>misremembering</b> [1] - 203:19</p> <p><b>mitigation</b> [1] - 158:6</p> <p><b>modifications</b> [1] - 156:21</p> <p><b>modified</b> [2] - 24:6, 24:12</p> <p><b>modify</b> [1] - 156:14</p> <p><b>moment</b> [3] - 33:24, 119:4, 177:21</p> <p><b>Monday</b> [1] - 9:17</p> <p><b>monitor</b> [2] - 49:22, 51:5</p> <p><b>monitoring</b> [6] - 43:15, 43:21, 45:2, 45:15, 54:6, 129:14</p> <p><b>monofil</b> [1] - 118:22</p> <p><b>month</b> [1] - 160:18</p> <p><b>months</b> [5] - 84:1, 117:14, 133:8, 183:6, 209:1</p> <p><b>MORGAN</b> [1] - 3:15</p> <p><b>morning</b> [1] - 210:21</p> <p><b>most</b> [8] - 76:4, 90:16, 90:22, 97:25, 100:15, 145:14, 176:20, 193:25</p> <p><b>motion</b> [35] - 5:10, 5:11, 5:16, 5:21, 5:24, 5:25, 6:2, 6:5, 6:10, 6:12, 6:20, 6:22, 7:4, 7:6, 7:19, 8:19, 8:21, 8:24, 9:11, 9:13, 9:18, 10:5, 10:8, 10:10, 10:14, 21:21, 72:4, 72:5, 72:8, 72:17, 73:10, 73:11, 74:8, 182:12, 182:13</p> <p><b>motions</b> [10] - 5:6, 5:8, 7:13, 8:4, 8:15, 8:16, 8:23, 9:1, 71:22, 72:14</p> <p><b>mouth</b> [1] - 97:9</p> <p><b>move</b> [14] - 54:25, 55:5, 59:14, 60:13,</p>	<p>123:18, 144:25, 150:9, 154:16, 166:9, 169:5, 174:4, 187:25, 197:22, 202:16</p> <p><b>moved</b> [2] - 78:2, 145:2</p> <p><b>moves</b> [1] - 72:20</p> <p><b>moving</b> [5] - 44:14, 50:19, 124:14, 139:19, 173:22</p> <p><b>MR</b> [318] - 2:7, 2:8, 2:9, 2:14, 2:21, 3:8, 3:8, 3:9, 3:9, 3:10, 3:11, 3:17, 3:18, 3:18, 3:19, 3:23, 8:6, 10:20, 10:23, 11:2, 11:10, 11:13, 11:18, 12:2, 12:10, 12:14, 13:10, 13:13, 13:22, 15:8, 16:2, 16:19, 17:10, 17:14, 19:1, 19:4, 19:11, 20:5, 21:18, 23:1, 23:4, 23:24, 24:22, 25:16, 25:24, 26:11, 26:15, 28:9, 28:19, 28:24, 29:5, 30:24, 31:6, 31:17, 31:21, 32:1, 32:14, 32:18, 33:3, 33:7, 33:9, 33:10, 33:20, 34:7, 35:4, 35:17, 35:25, 36:2, 36:8, 36:17, 36:18, 37:10, 38:2, 38:11, 39:1, 39:4, 39:10, 39:20, 40:6, 40:10, 40:16, 40:21, 41:3, 41:7, 41:10, 41:13, 41:19, 42:1, 42:3, 42:11, 42:14, 42:18, 43:2, 43:7, 43:8, 43:12, 43:24, 44:4, 44:11, 44:13, 45:8, 45:11, 45:17, 45:21, 45:24, 46:3, 46:7, 46:14, 46:18, 47:4, 47:13, 47:16, 48:3, 48:6, 48:9, 48:13, 48:14, 48:17, 48:20, 49:3, 49:8, 49:17, 50:8, 50:17, 50:20, 50:24, 51:3, 51:10, 51:12, 51:19, 51:20, 51:25, 52:6, 52:8, 52:13, 52:16, 52:18, 53:9, 53:15, 53:19, 53:25, 54:1, 54:10, 54:12, 54:14, 54:23, 55:4, 55:10, 55:18, 55:20, 55:22, 55:23,</p>
--	---	--	--	---



56:23, 57:7, 57:11,  
58:24, 59:3, 59:12,  
59:20, 59:22, 59:23,  
60:2, 60:9, 60:13,  
60:18, 60:21, 60:24,  
61:7, 61:13, 61:17,  
61:23, 62:2, 62:8,  
62:11, 62:17, 63:2,  
63:4, 63:7, 63:9,  
63:15, 63:17, 63:18,  
63:19, 63:24, 64:2,  
64:6, 64:7, 64:17,  
64:21, 64:25, 65:10,  
65:12, 65:19, 65:25,  
66:6, 66:15, 66:23,  
67:1, 67:4, 67:11,  
67:20, 68:11, 69:22,  
70:6, 70:14, 71:12,  
71:21, 72:3, 72:9,  
72:11, 72:19, 73:9,  
73:13, 74:14, 74:18,  
74:25, 81:19, 84:4,  
85:7, 86:2, 86:22,  
89:1, 89:24, 90:3,  
95:20, 98:16, 98:24,  
99:8, 100:17,  
103:16, 105:11,  
107:2, 112:15,  
119:5, 120:8,  
125:23, 126:8,  
128:3, 128:13,  
128:15, 129:16,  
135:15, 137:18,  
137:21, 138:3,  
142:4, 143:17,  
144:18, 145:8,  
146:24, 147:8,  
148:2, 150:24,  
151:25, 153:17,  
153:21, 157:7,  
160:13, 162:14,  
165:22, 166:15,  
167:22, 169:3,  
171:15, 177:12,  
177:17, 178:1,  
178:3, 178:7, 179:7,  
179:13, 179:18,  
180:4, 180:23,  
181:5, 181:7,  
181:11, 181:20,  
181:23, 181:25,  
182:2, 182:5,  
182:21, 183:4,  
183:11, 185:11,  
185:17, 185:22,  
187:25, 193:12,  
195:12, 196:6,  
201:18, 201:24,  
205:10, 205:14,  
205:16, 205:21,  
207:18, 207:22,

208:4, 209:13,  
209:17, 209:19,  
209:22, 210:6,  
210:9, 211:1,  
211:13, 212:5,  
212:17, 212:19,  
212:21, 213:6,  
213:9, 213:16,  
213:20, 214:5  
**MS** [37] - 2:8, 2:21,  
3:10, 4:8, 4:8, 8:9,  
12:16, 13:1, 13:15,  
13:23, 14:8, 14:13,  
14:19, 15:4, 15:10,  
15:15, 16:17, 17:7,  
17:18, 18:15, 18:23,  
20:4, 20:13, 22:20,  
22:25, 23:5, 48:18,  
72:5, 73:11, 129:18,  
131:8, 134:13,  
137:14, 187:21,  
195:4, 209:15,  
211:18  
**mud** [1] - 121:8  
**muddy** [1] - 121:18  
**MUIR** [57] - 2:9, 12:2,  
13:10, 13:13, 13:22,  
15:8, 31:6, 32:1,  
33:9, 35:25, 36:8,  
36:18, 37:10, 38:2,  
38:11, 39:10, 41:3,  
41:7, 41:13, 42:1,  
43:2, 43:7, 43:24,  
44:4, 44:11, 45:11,  
46:3, 46:18, 48:3,  
48:6, 48:9, 48:13,  
49:3, 50:17, 50:20,  
50:24, 51:3, 51:12,  
51:19, 52:8, 52:13,  
52:16, 53:15, 54:1,  
56:23, 57:7, 57:11,  
59:3, 60:24, 61:17,  
62:2, 62:8, 63:2,  
63:17, 64:7, 65:10,  
67:1

**Muir** [19] - 12:23, 13:8,  
14:11, 23:12, 35:24,  
39:8, 40:25, 43:18,  
45:14, 48:2, 50:5,  
51:15, 56:16, 56:18,  
61:6, 62:7, 62:15,  
65:2, 65:7  
**Muir's** [2] - 33:24,  
35:20  
**must** [1] - 5:21

## N

**N.W** [1] - 3:21  
**name** [9] - 75:3, 75:5,

87:1, 93:8, 138:18,  
139:12, 139:18,  
152:14, 162:3  
**naming** [1] - 183:16  
**Nann** [1] - 16:16  
**national** [1] - 80:20  
**natural** [1] - 161:25  
**nature** [2] - 180:23,  
191:24  
**navigable** [1] - 151:12  
**navigational** [1] -  
140:16  
**near** [4] - 145:24,  
171:8, 174:9, 203:21  
**nearing** [1] - 115:25  
**nebulous** [1] - 103:5  
**necessarily** [3] -  
21:18, 41:18, 64:13  
**necessary** [3] - 1:6,  
73:3, 111:18  
**necessity** [2] - 102:10,  
209:6  
**need** [30] - 6:24, 7:2,  
7:24, 10:4, 20:14,  
22:14, 24:15, 44:15,  
44:17, 52:25, 55:4,  
60:5, 66:6, 74:9,  
116:7, 120:22,  
133:10, 133:13,  
133:17, 143:10,  
150:13, 151:13,  
158:4, 158:5, 178:2,  
178:19, 208:16,  
209:20  
**needed** [5] - 36:20,  
39:18, 108:5,  
141:12, 181:3  
**needing** [1] - 108:11  
**needs** [4] - 24:3,  
127:22, 156:21,  
156:22  
**nefarious** [1] - 44:24  
**negligent** [1] - 44:23  
**negotiate** [1] - 94:6  
**NELSON** [1] - 3:23  
**never** [10] - 18:7,  
18:10, 36:4, 87:24,  
98:22, 135:5,  
139:12, 171:21,  
210:1, 210:4  
**new** [7] - 13:24, 28:22,  
78:7, 78:20, 79:18,  
164:20, 211:9  
**newspapers** [1] -  
94:22  
**next** [34] - 12:12, 14:6,  
23:5, 23:11, 45:19,  
48:1, 57:13, 65:1,  
71:17, 84:4, 85:7,  
85:16, 86:2, 86:22,

88:10, 89:1, 111:4,  
112:15, 112:25,  
114:4, 122:12,  
123:2, 125:23,  
141:22, 143:17,  
144:18, 145:5,  
145:9, 153:6,  
153:17, 154:22,  
162:5, 174:4, 174:5  
**nine** [1] - 171:1  
**NO** [1] - 1:2  
**nomenclature** [1] -  
183:16  
**nominal** [1] - 147:21  
**non** [1] - 53:12  
**non-elevated** [1] -  
53:12  
**none** [3] - 145:25,  
159:6, 209:23  
**nontoxic** [1] - 41:14  
**normal** [2] - 81:9,  
93:10  
**north** [6] - 104:3,  
113:4, 126:20,  
148:8, 162:19, 174:2  
**northwest** [3] -  
172:21, 202:23,  
203:1  
**northwestern** [2] -  
169:20, 194:6  
**notable** [1] - 168:1  
**note** [5] - 8:14, 11:20,  
102:22, 103:3,  
174:24  
**noted** [4] - 66:17,  
159:5, 172:5, 211:4  
**notes** [3] - 65:9,  
118:9, 137:25  
**nothing** [3] - 7:23,  
125:15, 210:9  
**notice** [24] - 57:16,  
154:20, 155:1,  
155:10, 156:5,  
156:25, 157:3,  
157:6, 157:22,  
157:24, 161:22,  
161:23, 163:10,  
163:13, 163:17,  
177:10, 177:11,  
197:17, 204:19,  
204:22, 204:23,  
204:24, 206:6  
**notification** [1] - 206:2  
**noting** [1] - 187:19  
**November** [5] - 84:1,  
159:10, 160:11,  
164:17, 164:23  
**number** [15] - 16:3,  
27:7, 44:24, 55:14,  
55:22, 70:16, 75:12,

110:2, 117:17,  
122:22, 123:9,  
123:11, 165:8,  
175:17, 176:10  
**numbered** [3] - 1:18,  
68:2, 215:10  
**numerical** [2] - 190:5,  
190:10  
**numerous** [2] - 75:15,  
178:15

## O

**object** [9] - 36:18,  
48:20, 52:18, 54:21,  
69:23, 89:25,  
105:12, 128:13,  
213:9  
**objected** [1] - 158:2  
**objecting** [2] - 58:18,  
181:16  
**objection** [54] - 10:24,  
11:18, 12:13, 12:21,  
12:22, 12:24, 13:21,  
14:5, 14:7, 15:22,  
18:10, 22:15, 22:19,  
23:6, 23:8, 23:9,  
35:25, 36:1, 40:4,  
40:13, 40:15, 43:1,  
43:8, 43:9, 55:7,  
55:8, 55:9, 55:10,  
59:2, 60:3, 60:10,  
60:17, 61:3, 62:6,  
62:14, 62:16, 63:14,  
65:2, 65:15, 66:13,  
66:18, 90:4, 98:24,  
99:8, 135:15, 158:8,  
163:25, 182:6,  
187:21, 195:4,  
211:8, 211:19,  
211:21, 211:23  
**objections** [12] -  
23:13, 33:24, 35:20,  
60:25, 61:11, 61:14,  
69:16, 70:2, 163:20,  
163:24, 211:14,  
211:15  
**objects** [1] - 56:17  
**obligation** [5] - 87:19,  
88:24, 135:13,  
135:22, 137:12  
**obligations** [6] -  
87:25, 88:6, 88:12,  
88:22, 89:6, 137:2  
**observation** [2] -  
168:18, 171:25  
**observations** [2] -  
169:8, 174:11  
**observe** [1] - 167:16  
**observed** [2] - 141:19,

<p>164:5</p> <p><b>observing</b> [1] - 193:4</p> <p><b>obtain</b> [3] - 92:22, 146:5, 151:20</p> <p><b>obtained</b> [4] - 76:13, 95:10, 131:2, 134:11</p> <p><b>obvious</b> [1] - 106:12</p> <p><b>obviously</b> [1] - 208:8</p> <p><b>occasion</b> [3] - 82:17, 87:6, 94:20</p> <p><b>occur</b> [2] - 21:10, 153:14</p> <p><b>occurred</b> [7] - 34:5, 35:7, 131:24, 132:15, 154:14, 206:19, 215:11</p> <p><b>occurring</b> [3] - 78:21, 91:16, 128:17</p> <p><b>OCTOBER</b> [2] - 1:15, 5:1</p> <p><b>October</b> [7] - 1:18, 17:3, 71:7, 78:9, 175:16, 176:1, 215:18</p> <p><b>OF</b> [11] - 1:1, 1:4, 1:4, 1:11, 2:11, 2:17, 2:18, 3:4, 215:1, 215:1</p> <p><b>off-loaded</b> [1] - 111:7</p> <p><b>offer</b> [22] - 22:20, 29:24, 37:3, 45:6, 45:19, 46:9, 46:12, 46:24, 58:23, 61:4, 62:23, 67:13, 67:17, 68:7, 69:24, 69:25, 70:4, 105:13, 212:6, 212:21, 215:15</p> <p><b>offered</b> [7] - 28:3, 29:24, 38:23, 46:17, 52:13, 63:2, 215:16</p> <p><b>offering</b> [11] - 43:13, 62:20, 62:21, 63:24, 63:25, 64:2, 64:4, 69:15, 130:1, 212:14, 213:3</p> <p><b>offers</b> [3] - 44:5, 46:18, 64:20</p> <p><b>office</b> [8] - 13:16, 29:8, 30:12, 48:7, 77:16, 78:3, 79:18, 157:14</p> <p><b>OFFICE</b> [2] - 2:11, 2:18</p> <p><b>officer</b> [1] - 93:1</p> <p><b>offices</b> [1] - 80:20</p> <p><b>Official</b> [2] - 215:3, 215:22</p> <p><b>officials</b> [2] - 156:10, 164:4</p> <p><b>offload</b> [1] - 111:15</p>	<p><b>offshore</b> [1] - 91:1</p> <p><b>offsite</b> [3] - 91:6, 91:14, 92:12</p> <p><b>often</b> [1] - 25:19</p> <p><b>old</b> [4] - 141:16, 148:24, 172:20, 174:1</p> <p><b>Ole</b> [8] - 96:16, 99:18, 131:3, 131:15, 131:24, 133:7, 133:22, 134:3</p> <p><b>ON</b> [1] - 1:5</p> <p><b>once</b> [12] - 24:4, 44:16, 44:18, 46:4, 105:10, 110:11, 118:3, 118:25, 125:13, 135:12, 168:24</p> <p><b>one</b> [125] - 5:17, 5:21, 5:23, 7:23, 8:25, 9:3, 9:4, 9:10, 12:12, 12:18, 13:8, 13:15, 13:24, 14:1, 16:21, 23:18, 24:2, 24:12, 24:13, 25:9, 25:13, 27:3, 27:5, 27:17, 32:2, 33:13, 35:2, 39:11, 40:14, 43:19, 44:5, 45:11, 45:13, 46:16, 46:18, 55:11, 63:21, 64:10, 66:8, 66:9, 66:11, 69:8, 70:16, 72:16, 72:18, 73:14, 82:17, 83:24, 89:3, 92:15, 94:8, 99:18, 103:11, 107:8, 110:2, 110:3, 111:6, 114:4, 117:18, 118:24, 121:1, 122:22, 126:19, 129:4, 130:21, 130:22, 132:9, 136:8, 136:11, 136:22, 137:24, 142:1, 142:13, 142:17, 143:21, 144:8, 145:5, 147:1, 151:19, 153:9, 155:3, 157:4, 157:5, 157:14, 157:15, 158:23, 158:24, 161:7, 162:5, 162:7, 163:1, 165:18, 166:21, 168:3, 171:9, 179:2, 182:11, 184:16, 185:24, 187:7, 193:12, 194:9, 196:24, 196:25,</p>	<p>197:15, 197:24, 198:2, 198:21, 198:25, 199:1, 199:25, 200:19, 202:18, 203:20, 205:12, 208:7, 211:18, 213:11</p> <p><b>one-way</b> [1] - 111:6</p> <p><b>ones</b> [5] - 24:4, 45:12, 45:13, 64:10, 161:7</p> <p><b>ongoing</b> [11] - 34:25, 66:25, 87:19, 87:25, 88:5, 88:21, 89:16, 127:5, 129:13, 129:14</p> <p><b>onshore</b> [3] - 145:13, 145:14, 150:10</p> <p><b>open</b> [7] - 20:25, 30:3, 31:21, 41:24, 46:13, 112:13, 215:11</p> <p><b>Open</b> [1] - 146:10</p> <p><b>opened</b> [2] - 47:11, 89:15</p> <p><b>opening</b> [5] - 23:24, 24:11, 27:25, 84:23, 89:13</p> <p><b>opens</b> [4] - 30:7, 30:10, 31:13, 45:5</p> <p><b>operate</b> [6] - 79:12, 116:20, 122:11, 133:10, 133:14, 133:18</p> <p><b>operated</b> [7] - 79:13, 105:2, 107:1, 139:16, 148:19, 159:15, 167:14</p> <p><b>operating</b> [6] - 78:5, 94:12, 121:18, 123:14, 159:22, 164:10</p> <p><b>operation</b> [43] - 34:14, 89:16, 89:19, 89:20, 92:8, 92:13, 92:22, 95:23, 97:17, 98:21, 99:5, 99:7, 101:21, 101:25, 102:6, 104:16, 104:19, 124:22, 126:2, 126:3, 127:5, 128:6, 128:11, 128:17, 130:9, 139:9, 139:11, 143:14, 144:17, 155:19, 159:16, 166:10, 181:2, 184:14, 184:25, 198:11, 199:6, 199:9, 199:18, 200:3, 208:20, 208:21, 208:23</p>	<p><b>operations</b> [16] - 77:7, 88:1, 89:7, 91:24, 95:18, 95:24, 110:25, 119:17, 123:13, 126:12, 126:14, 129:5, 130:7, 133:4, 146:16, 200:8</p> <p><b>operator</b> [3] - 133:9, 135:11</p> <p><b>opinion</b> [35] - 7:24, 14:18, 26:3, 88:24, 89:5, 89:8, 99:2, 99:5, 105:13, 105:15, 106:4, 118:2, 128:9, 128:19, 130:4, 130:15, 133:24, 135:16, 136:22, 176:20, 176:22, 184:17, 189:11, 189:14, 190:23, 191:4, 191:19, 192:7, 197:21, 200:11, 206:16, 206:21, 206:25, 207:14, 208:22</p> <p><b>opinions</b> [10] - 29:24, 88:20, 104:22, 130:1, 183:9, 190:3, 194:9, 200:16, 206:14, 206:15</p> <p><b>opportunity</b> [1] - 48:11</p> <p><b>opposed</b> [5] - 29:16, 31:9, 41:4, 43:3, 135:7</p> <p><b>optional</b> [13] - 35:20, 37:2, 38:18, 38:21, 40:25, 41:6, 46:11, 46:23, 47:6, 47:23, 51:1, 51:8, 67:5</p> <p><b>order</b> [9] - 29:24, 116:2, 116:21, 123:17, 136:12, 144:11, 150:9, 156:11, 168:2</p> <p><b>organic</b> [4] - 119:18, 119:22, 119:23, 125:17</p> <p><b>organization</b> [2] - 78:12, 92:20</p> <p><b>organizations</b> [1] - 158:1</p> <p><b>orient</b> [1] - 148:17</p> <p><b>oriented</b> [1] - 107:22</p> <p><b>original</b> [2] - 133:21, 188:25</p> <p><b>originally</b> [3] - 24:11, 109:3, 110:17</p>	<p><b>otherwise</b> [1] - 97:21</p> <p><b>ought</b> [3] - 16:24, 17:6, 61:21</p> <p><b>ourselves</b> [1] - 130:6</p> <p><b>outcome</b> [1] - 73:25</p> <p><b>outer</b> [2] - 127:18, 132:4</p> <p><b>outermost</b> [1] - 184:9</p> <p><b>outlined</b> [1] - 148:7</p> <p><b>outside</b> [12] - 5:4, 17:3, 19:6, 23:15, 99:10, 177:18, 179:1, 195:8, 204:1, 207:25, 210:15, 210:24</p> <p><b>overall</b> [1] - 25:1</p> <p><b>overburden</b> [2] - 149:19, 150:17</p> <p><b>overburdened</b> [3] - 143:16, 149:25, 150:2</p> <p><b>overflow</b> [2] - 109:6, 111:11</p> <p><b>overflowing</b> [1] - 118:16</p> <p><b>overrule</b> [3] - 12:22, 14:5, 40:15</p> <p><b>overruled</b> [4] - 23:9, 23:10, 40:4, 62:14</p> <p><b>overruling</b> [1] - 69:23</p> <p><b>overwhelmingly</b> [3] - 177:4, 206:19, 206:23</p> <p><b>OWENS</b> [1] - 2:14</p> <p><b>own</b> [9] - 41:24, 58:21, 75:17, 78:11, 88:8, 88:13, 88:21, 121:7, 137:2</p> <p><b>owned</b> [7] - 87:24, 134:21, 148:6, 154:5, 184:19, 186:1, 210:3</p> <p><b>owner</b> [7] - 13:4, 20:19, 20:22, 21:2, 21:8, 134:10, 147:13</p> <p><b>owners</b> [6] - 21:4, 157:11, 157:12, 157:13, 157:24, 163:15</p> <p><b>ownership</b> [11] - 6:8, 7:11, 9:19, 16:12, 17:21, 17:25, 18:3, 19:21, 19:23, 20:8</p> <p><b>owns</b> [1] - 187:15</p> <p><b>oyster</b> [7] - 140:22, 140:23, 141:9, 141:16, 144:16, 159:16</p>
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P				
<p><b>P.O</b> [1] - 2:19</p> <p><b>Page</b> [42] - 10:25, 11:11, 11:14, 12:6, 12:7, 14:17, 22:21, 22:23, 23:9, 23:11, 32:15, 32:18, 33:8, 35:23, 37:6, 37:20, 40:7, 40:22, 43:3, 46:20, 47:24, 48:17, 48:23, 49:18, 51:4, 54:22, 56:11, 56:22, 57:9, 61:11, 61:17, 65:20, 66:19, 120:8, 148:2, 149:5, 156:3, 156:24, 158:18, 163:9, 203:16</p> <p><b>page</b> [32] - 12:22, 14:7, 14:9, 22:13, 22:21, 32:12, 33:4, 34:5, 46:19, 48:2, 48:14, 51:15, 58:4, 58:14, 59:5, 67:5, 81:21, 81:22, 125:23, 126:8, 131:20, 153:18, 159:1, 162:8, 162:14, 174:4, 174:5, 174:17, 178:19, 185:18, 211:4</p> <p><b>pages</b> [3] - 19:13, 34:8, 71:4</p> <p><b>paid</b> [10] - 25:3, 25:21, 26:2, 29:16, 29:18, 29:23, 82:7, 147:10, 200:24</p> <p><b>PAPER</b> [2] - 1:9, 3:14</p> <p><b>Paper</b> [13] - 8:22, 71:22, 71:25, 72:12, 72:20, 85:23, 86:12, 86:18, 87:20, 88:20, 89:6, 96:11, 107:21</p> <p><b>paper</b> [16] - 84:25, 110:9, 115:5, 119:24, 182:4, 190:1, 190:22, 194:11, 195:24, 196:2, 196:11, 196:12, 197:6, 197:10, 206:17, 207:2</p> <p><b>Paper's</b> [5] - 5:9, 5:24, 6:2, 6:10, 196:18</p> <p><b>Papers</b> [1] - 212:23</p> <p><b>paragraph</b> [28] - 57:3, 58:16, 101:3, 101:14, 120:13, 121:11, 121:23,</p>	<p>121:24, 123:2, 125:3, 125:25, 147:17, 149:7, 149:13, 152:20, 156:4, 156:5, 161:13, 164:15, 164:16, 165:4, 170:23, 172:1, 172:14, 172:16, 173:22, 185:23, 190:16</p> <p><b>Paragraph</b> [1] - 212:10</p> <p><b>paragraphs</b> [1] - 104:1</p> <p><b>parameter</b> [1] - 122:18</p> <p><b>Pardue</b> [13] - 59:18, 64:19, 86:4, 86:7, 116:14, 116:23, 125:6, 185:5, 186:21, 193:5, 193:6, 193:9, 198:5</p> <p><b>Pardue's</b> [3] - 86:14, 116:16, 117:2</p> <p><b>parent</b> [1] - 79:2</p> <p><b>parentheticals</b> [1] - 165:8</p> <p><b>parker</b> [7] - 141:21, 159:11, 159:14, 159:16, 161:2, 165:1</p> <p><b>Parker</b> [1] - 159:17</p> <p><b>Parks</b> [11] - 68:5, 70:21, 171:9, 171:22, 173:14, 174:6, 174:18, 176:11, 205:13, 205:18, 206:5</p> <p><b>parks</b> [5] - 57:14, 62:9, 66:20, 68:17, 173:24</p> <p><b>parlance</b> [1] - 118:23</p> <p><b>parol</b> [2] - 213:20, 213:21</p> <p><b>part</b> [77] - 7:9, 15:2, 23:22, 24:14, 25:2, 32:11, 34:9, 34:12, 34:14, 37:11, 38:24, 39:5, 40:22, 44:8, 46:5, 47:4, 47:17, 48:1, 48:13, 49:25, 50:3, 50:12, 50:15, 50:22, 52:2, 52:19, 52:23, 60:24, 61:4, 62:20, 63:9, 70:23, 71:17, 81:4, 106:22, 107:15, 107:19, 108:7, 108:8, 109:7, 109:9, 109:11, 112:14, 113:13, 114:9, 115:11, 115:16, 115:22,</p>	<p>115:24, 116:6, 116:16, 117:1, 119:17, 124:2, 124:4, 124:25, 127:17, 127:18, 138:9, 138:10, 138:11, 138:15, 150:13, 156:18, 161:8, 162:12, 163:2, 169:19, 170:6, 170:7, 176:24, 184:9, 186:2, 197:1</p> <p><b>partially</b> [2] - 189:8, 207:9</p> <p><b>participants</b> [1] - 196:9</p> <p><b>participate</b> [2] - 44:1, 50:1</p> <p><b>participated</b> [1] - 70:25</p> <p><b>participates</b> [1] - 49:24</p> <p><b>participating</b> [6] - 46:25, 82:8, 139:10, 161:10, 175:24, 195:22</p> <p><b>participation</b> [2] - 50:10, 139:22</p> <p><b>particle</b> [1] - 143:8</p> <p><b>particular</b> [22] - 19:14, 21:23, 22:1, 45:1, 45:6, 59:16, 77:6, 77:9, 92:8, 118:24, 134:5, 145:19, 162:12, 163:1, 170:25, 183:18, 184:21, 185:19, 186:23, 187:18, 202:20, 203:16</p> <p><b>particularly</b> [2] - 44:14, 104:10</p> <p><b>parties</b> [18] - 5:12, 8:20, 9:15, 10:3, 10:7, 37:21, 70:16, 70:18, 72:13, 81:23, 88:17, 137:6, 137:9, 156:10, 163:20, 212:12, 213:25, 215:9</p> <p><b>parts</b> [3] - 51:21, 143:24, 203:13</p> <p><b>party</b> [14] - 1:7, 7:24, 8:3, 28:22, 72:25, 73:4, 73:14, 73:15, 73:17, 73:20, 74:2, 74:6, 82:9, 92:11</p> <p><b>party's</b> [1] - 69:2</p> <p><b>Pasadena</b> [1] - 106:11</p> <p><b>pass</b> [4] - 80:9,</p>	<p>129:16, 177:14, 209:13</p> <p><b>passage</b> [1] - 79:22</p> <p><b>passed</b> [3] - 22:2, 79:21, 136:17</p> <p><b>passion</b> [1] - 93:17</p> <p><b>past</b> [7] - 26:17, 40:22, 67:12, 82:14, 82:22, 87:4, 172:25</p> <p><b>Patel</b> [3] - 13:8, 14:6, 14:15</p> <p><b>PAULA</b> [1] - 4:8</p> <p><b>pay</b> [2] - 59:22, 183:2</p> <p><b>penalties</b> [7] - 17:21, 23:20, 24:9, 24:18, 29:2, 32:6, 136:1</p> <p><b>penalty</b> [5] - 17:4, 18:7, 19:6, 73:19, 139:21</p> <p><b>pending</b> [1] - 174:23</p> <p><b>penetrate</b> [1] - 122:1</p> <p><b>penetrated</b> [1] - 170:5</p> <p><b>people</b> [3] - 27:1, 31:12, 56:9</p> <p><b>per</b> [5] - 5:23, 9:3, 9:4, 9:7, 31:1</p> <p><b>percent</b> [5] - 110:18, 110:22, 110:23, 110:25, 123:9</p> <p><b>percentages</b> [1] - 111:10</p> <p><b>performed</b> [3] - 82:6, 160:23, 163:8</p> <p><b>perhaps</b> [1] - 201:11</p> <p><b>period</b> [20] - 17:4, 19:1, 34:13, 44:19, 66:16, 79:13, 84:12, 90:14, 91:3, 118:14, 118:15, 123:22, 126:11, 139:17, 139:21, 141:3, 168:14, 199:5, 199:20, 204:8</p> <p><b>periodically</b> [1] - 111:14</p> <p><b>permeability</b> [5] - 122:4, 122:7, 122:21, 123:25, 124:1</p> <p><b>permissible</b> [2] - 56:7, 62:12</p> <p><b>permission</b> [3] - 34:20, 36:15, 151:14</p> <p><b>permit</b> [54] - 6:5, 36:6, 37:22, 58:1, 62:9, 71:9, 93:12, 95:6, 95:7, 133:10, 133:12, 133:13, 133:18, 151:17, 151:23, 153:12,</p>	<p>153:14, 155:5, 156:15, 156:22, 158:2, 158:12, 158:13, 158:15, 158:16, 159:23, 160:18, 160:23, 161:14, 161:17, 161:18, 161:19, 163:23, 164:2, 164:6, 165:5, 170:18, 170:20, 170:23, 174:19, 175:13, 175:17, 175:25, 176:5, 176:10, 176:13, 178:15, 178:17, 178:20, 181:3, 181:21, 182:1, 210:2</p> <p><b>permits</b> [19] - 34:18, 35:7, 35:13, 36:15, 36:23, 36:25, 37:8, 38:5, 38:9, 59:8, 133:19, 171:10, 180:6, 181:8, 182:17, 209:6, 209:8, 209:11, 209:23</p> <p><b>permitted</b> [6] - 154:12, 168:14, 178:8, 178:12, 179:10, 182:9</p> <p><b>permitting</b> [7] - 33:25, 36:7, 65:8, 93:14, 104:25, 146:16, 165:7</p> <p><b>personally</b> [1] - 81:10</p> <p><b>personnel</b> [1] - 164:16</p> <p><b>persons</b> [2] - 156:8, 157:5</p> <p><b>pertinent</b> [1] - 22:5</p> <p><b>Peterson</b> [8] - 96:16, 99:18, 131:4, 131:16, 131:24, 133:7, 133:22, 134:3</p> <p><b>petrochemical</b> [1] - 76:24</p> <p><b>PHA</b> [1] - 31:22</p> <p><b>pharmaceutical</b> [1] - 80:4</p> <p><b>Phase</b> [4] - 162:23, 162:24, 204:3</p> <p><b>phase</b> [2] - 163:3, 163:4</p> <p><b>phases</b> [2] - 130:21, 162:23</p> <p><b>phone</b> [1] - 96:5</p> <p><b>PHONE</b> [7] - 2:6, 2:13, 2:20, 3:7, 3:16, 3:22, 4:7</p> <p><b>photo</b> [14] - 107:4,</p>

<p>138:4, 167:20, 167:24, 168:2, 169:2, 171:3, 173:4, 188:3, 188:21, 201:23, 202:17, 202:20</p> <p><b>photograph</b> [9] - 105:20, 106:5, 107:3, 115:20, 169:22, 183:13, 183:19, 183:23, 201:20</p> <p><b>photographs</b> [7] - 170:4, 176:19, 183:14, 188:7, 188:11, 188:12, 189:6</p> <p><b>photography</b> [6] - 167:8, 167:12, 167:15, 167:18, 173:10, 205:3</p> <p><b>phrase</b> [2] - 49:1, 186:22</p> <p><b>phrased</b> [2] - 9:21, 179:9</p> <p><b>phrasing</b> [1] - 41:15</p> <p><b>physical</b> [7] - 120:25, 121:1, 125:16, 190:21, 190:23, 191:7, 204:24</p> <p><b>phytotoxic</b> [3] - 122:22, 179:15</p> <p><b>Phytotoxicity</b> [1] - 122:23</p> <p><b>pick</b> [3] - 53:24, 64:15, 64:21</p> <p><b>picks</b> [1] - 53:8</p> <p><b>picture</b> [3] - 146:12, 183:21, 203:5</p> <p><b>pictures</b> [1] - 142:6</p> <p><b>pieces</b> [2] - 10:1, 191:4</p> <p><b>piled</b> [1] - 176:25</p> <p><b>piles</b> [1] - 170:1</p> <p><b>pilot</b> [2] - 100:3, 160:1</p> <p><b>pipe</b> [13] - 109:5, 112:21, 114:1, 114:17, 114:22, 115:9, 116:2, 127:14, 144:13, 166:3, 166:11, 166:23</p> <p><b>piped</b> [1] - 112:22</p> <p><b>Pit</b> [4] - 194:1, 202:10, 203:10</p> <p><b>pit</b> [21] - 117:8, 172:20, 172:21, 175:6, 180:22, 184:21, 184:22, 185:1, 185:6,</p>	<p>186:13, 186:18, 188:7, 188:8, 189:9, 189:12, 194:7, 195:2</p> <p><b>pitch</b> [1] - 37:17</p> <p><b>pits</b> [29] - 60:4, 69:10, 86:10, 86:19, 90:9, 117:25, 124:18, 124:23, 174:1, 176:23, 183:15, 183:21, 186:11, 186:16, 186:19, 187:3, 187:7, 187:9, 187:10, 189:7, 191:18, 204:6, 204:19, 204:20, 205:6, 206:4, 206:9, 207:2, 207:8</p> <p><b>place</b> [18] - 42:25, 54:3, 89:20, 106:17, 136:13, 144:11, 144:12, 145:24, 154:10, 166:22, 168:16, 186:17, 192:15, 194:10, 195:19, 199:18, 203:21, 206:20</p> <p><b>placed</b> [3] - 90:9, 114:22, 191:17</p> <p><b>placement</b> [1] - 132:3</p> <p><b>places</b> [3] - 39:17, 44:4, 211:4</p> <p><b>placing</b> [1] - 89:22</p> <p><b>Plaintiff</b> [1] - 1:4</p> <p><b>plaintiff</b> [2] - 29:25, 135:25</p> <p><b>PLAINTIFF</b> [2] - 2:3, 2:17</p> <p><b>plaintiffs</b> [2] - 83:22, 132:11</p> <p><b>plaintiffs'</b> [2] - 42:12, 85:17</p> <p><b>Plaintiffs'</b> [1] - 67:21</p> <p><b>plan</b> [1] - 101:2</p> <p><b>planning</b> [1] - 99:20</p> <p><b>plant</b> [26] - 76:24, 77:2, 77:6, 77:9, 77:14, 77:18, 77:21, 78:1, 90:23, 91:8, 98:4, 109:2, 110:7, 110:8, 111:17, 112:7, 122:23, 123:16, 124:16, 141:23, 141:24, 178:11, 181:22, 181:24, 182:3</p> <p><b>planting</b> [1] - 161:11</p> <p><b>plants</b> [5] - 90:22, 178:10, 179:4, 179:17, 179:21</p> <p><b>play</b> [1] - 47:8</p>	<p><b>played</b> [3] - 41:21, 60:10, 130:7</p> <p><b>plays</b> [1] - 25:1</p> <p><b>pleading</b> [2] - 49:1, 52:2</p> <p><b>pleadings</b> [2] - 83:16, 83:21</p> <p><b>plenty</b> [2] - 117:22, 118:2</p> <p><b>plug</b> [3] - 112:13, 114:21, 114:23</p> <p><b>POGGE</b> [1] - 3:10</p> <p><b>point</b> [61] - 9:2, 16:3, 16:10, 17:2, 18:14, 19:4, 19:19, 21:24, 23:21, 24:5, 25:17, 25:18, 26:17, 28:3, 30:23, 30:25, 32:11, 33:7, 34:8, 36:13, 37:2, 45:1, 50:25, 53:21, 54:6, 54:23, 56:3, 60:21, 63:10, 63:13, 63:16, 66:24, 77:11, 77:24, 78:25, 83:23, 91:20, 103:8, 105:7, 105:9, 112:18, 112:25, 113:2, 113:3, 113:4, 113:21, 114:14, 114:20, 121:13, 123:21, 124:8, 129:11, 134:6, 148:17, 159:2, 171:11, 174:22, 186:20, 196:13, 206:8, 210:4</p> <p><b>pointed</b> [3] - 19:7, 125:1, 186:6</p> <p><b>pointedly</b> [1] - 44:6</p> <p><b>pointer</b> [2] - 142:9, 157:10</p> <p><b>points</b> [1] - 127:12</p> <p><b>poles</b> [1] - 166:8</p> <p><b>policy</b> [1] - 23:14</p> <p><b>political</b> [2] - 25:13, 25:18</p> <p><b>pollution</b> [2] - 92:20, 94:7</p> <p><b>Pollution</b> [5] - 26:2, 29:16, 152:10, 152:11, 152:15</p> <p><b>pond</b> [20] - 97:9, 101:5, 112:16, 112:17, 112:22, 113:6, 113:23, 113:25, 114:2, 114:14, 114:24, 115:10, 123:20, 126:18, 126:22, 128:7, 128:24,</p>	<p>168:6, 168:7</p> <p><b>ponder</b> [1] - 182:22</p> <p><b>ponds</b> [5] - 108:15, 113:21, 120:4, 123:5, 126:17</p> <p><b>pontoons</b> [1] - 145:12</p> <p><b>port</b> [2] - 58:12, 58:15</p> <p><b>Port</b> [4] - 57:24, 58:5, 63:11, 66:21</p> <p><b>portion</b> [16] - 10:7, 22:18, 23:18, 34:3, 40:18, 41:11, 54:2, 57:8, 113:12, 114:17, 168:19, 168:20, 172:20, 178:22, 184:12, 185:7</p> <p><b>portions</b> [9] - 20:1, 23:22, 24:16, 46:21, 58:11, 186:12, 188:15, 193:13, 215:7</p> <p><b>position</b> [17] - 6:18, 8:3, 19:20, 20:11, 22:11, 31:4, 46:24, 64:13, 93:17, 144:7, 144:12, 166:9, 183:10, 186:21, 187:18, 206:18, 212:15</p> <p><b>positioning</b> [1] - 144:24</p> <p><b>positions</b> [3] - 11:24, 130:2, 144:4</p> <p><b>possibility</b> [3] - 111:22, 128:23, 207:4</p> <p><b>possible</b> [3] - 20:20, 20:21, 140:13</p> <p><b>post</b> [5] - 85:24, 88:16, 88:22, 89:7, 137:5</p> <p><b>post-closure</b> [2] - 88:16, 137:5</p> <p><b>postmasters</b> [1] - 163:16</p> <p><b>potential</b> [5] - 7:22, 149:12, 174:7, 207:13, 207:16</p> <p><b>potentially</b> [2] - 10:2, 27:25</p> <p><b>power</b> [2] - 97:20, 110:14</p> <p><b>practically</b> [2] - 101:10, 104:12</p> <p><b>practice</b> [5] - 79:24, 84:15, 91:19, 92:15, 93:10</p> <p><b>practices</b> [1] - 98:8</p> <p><b>pre</b> [10] - 13:18, 13:20,</p>	<p>15:20, 23:7, 54:22, 55:19, 59:13, 65:11, 65:13</p> <p><b>pre-admit</b> [3] - 13:18, 13:20, 15:20</p> <p><b>pre-admitted</b> [7] - 23:7, 54:22, 55:19, 59:13, 65:11, 65:13</p> <p><b>preapproved</b> [1] - 104:24</p> <p><b>precisely</b> [3] - 150:20, 204:4, 210:2</p> <p><b>predates</b> [1] - 167:20</p> <p><b>predecessor</b> [2] - 26:21, 26:22</p> <p><b>prejudice</b> [4] - 5:11, 6:6, 6:13, 9:14</p> <p><b>prepared</b> [3] - 69:10, 71:5, 127:19</p> <p><b>presence</b> [8] - 5:4, 80:20, 174:7, 177:19, 179:1, 195:8, 205:6, 210:24</p> <p><b>Present</b> [3] - 70:10, 74:15, 182:25</p> <p><b>present</b> [6] - 13:19, 28:21, 70:17, 71:18, 127:24, 177:22</p> <p><b>presented</b> [7] - 7:15, 13:14, 17:16, 20:10, 28:13, 32:3, 74:11</p> <p><b>preserved</b> [3] - 211:7, 211:13, 211:15</p> <p><b>resident</b> [2] - 80:25, 161:4</p> <p><b>Presiding</b> [1] - 1:19</p> <p><b>pressed</b> [1] - 73:18</p> <p><b>pressure</b> [3] - 108:18, 108:19, 110:12</p> <p><b>pretty</b> [8] - 13:20, 83:20, 83:21, 106:17, 138:23, 143:22, 169:14, 180:4</p> <p><b>prevail</b> [1] - 73:5</p> <p><b>prevailing</b> [6] - 72:25, 73:15, 73:17, 73:20, 74:2, 74:6</p> <p><b>prevent</b> [1] - 115:17</p> <p><b>previous</b> [7] - 13:24, 65:7, 69:18, 133:8, 158:15, 212:12, 213:4</p> <p><b>previously</b> [3] - 7:16, 17:17, 101:4</p> <p><b>primarily</b> [5] - 93:2, 140:15, 179:20, 206:19, 206:23</p> <p><b>primary</b> [7] - 75:9, 80:18, 90:24, 91:5,</p>
--	---	---	---	--

<p>194:2, 194:4, 194:6  <b>privilege</b> [4] - 14:23, 15:22, 15:25, 18:8  <b>privileged</b> [1] - 15:1  <b>problem</b> [13] - 12:1, 20:24, 22:17, 34:15, 34:25, 36:20, 44:18, 45:6, 54:18, 91:3, 171:12, 182:6, 200:2  <b>problems</b> [2] - 81:3, 94:10  <b>procedurally</b> [1] - 54:24  <b>proceed</b> [4] - 74:13, 137:18, 183:2, 195:11  <b>proceeding</b> [1] - 18:11  <b>proceedings</b> [10] - 1:19, 99:12, 127:25, 195:9, 208:2, 210:17, 210:23, 212:3, 215:8, 215:14  <b>Proceedings</b> [1] - 1:21  <b>process</b> [29] - 22:7, 23:15, 47:17, 50:13, 77:7, 81:25, 82:1, 82:9, 100:4, 100:12, 108:10, 109:20, 109:23, 109:25, 110:6, 112:24, 115:8, 119:18, 124:25, 126:6, 144:25, 146:8, 156:6, 156:18, 156:23, 197:13, 197:15, 197:19, 199:13  <b>processing</b> [2] - 119:17, 145:16  <b>produced</b> [6] - 1:21, 14:25, 15:21, 16:4, 18:9, 170:1  <b>production</b> [2] - 16:3, 200:8  <b>products</b> [1] - 29:22  <b>professional</b> [1] - 75:8  <b>proffering</b> [1] - 40:11  <b>Program</b> [1] - 155:24  <b>program</b> [8] - 49:25, 51:18, 51:24, 76:20, 79:4, 81:8, 94:24, 95:2  <b>project</b> [14] - 83:22, 108:4, 116:2, 139:6, 146:6, 158:4, 161:8, 161:9, 162:8, 162:10, 162:12, 163:2, 169:16, 184:10</p>	<p><b>projects</b> [4] - 139:2, 141:24, 151:7, 155:8  <b>proof</b> [6] - 22:21, 67:18, 69:24, 69:25, 70:4, 215:16  <b>proper</b> [3] - 21:4, 54:3, 111:24  <b>properly</b> [1] - 15:18  <b>properties</b> [3] - 112:9, 120:25, 121:2  <b>property</b> [28] - 17:22, 19:24, 20:19, 21:5, 101:23, 102:8, 103:5, 113:12, 135:3, 135:9, 148:6, 148:22, 151:22, 153:24, 154:5, 157:11, 157:12, 157:13, 157:24, 163:15, 166:24, 169:24, 186:6, 187:1, 199:11, 199:16, 210:3  <b>property's</b> [1] - 172:24  <b>proposal</b> [4] - 98:11, 146:21, 152:21, 156:15  <b>proposed</b> [11] - 57:20, 58:6, 59:9, 95:16, 95:17, 98:12, 155:5, 155:10, 155:12, 156:11, 158:8  <b>proposing</b> [4] - 37:21, 50:6, 50:16, 154:25  <b>protect</b> [1] - 53:4  <b>PROTECTION</b> [1] - 2:18  <b>Protection</b> [2] - 69:11, 71:1  <b>provide</b> [5] - 10:12, 21:8, 81:14, 129:12, 199:19  <b>provided</b> [1] - 106:9  <b>provides</b> [6] - 39:21, 73:15, 73:16, 107:9, 122:19, 122:25  <b>provisions</b> [1] - 156:20  <b>prudent</b> [1] - 93:19  <b>public</b> [13] - 13:3, 13:5, 13:14, 48:21, 53:4, 57:16, 78:21, 154:20, 155:1, 155:4, 155:8, 157:16, 157:22  <b>Public</b> [2] - 27:8, 27:12  <b>pull</b> [9] - 112:20, 131:8, 134:13, 136:23, 185:11,</p>	<p>198:20, 201:18, 205:10, 205:21  <b>pulleys</b> [1] - 145:1  <b>pulp</b> [1] - 119:17  <b>pulping</b> [1] - 110:6  <b>pump</b> [5] - 97:20, 97:21, 143:9, 144:3, 145:11  <b>pumped</b> [2] - 115:4, 129:2  <b>pumping</b> [3] - 111:8, 115:8, 142:22  <b>purchased</b> [1] - 147:14  <b>purpose</b> [9] - 5:20, 12:7, 15:8, 26:18, 27:14, 27:17, 27:22, 101:6, 149:11  <b>purposes</b> [11] - 5:22, 18:7, 20:23, 31:16, 70:4, 104:6, 140:16, 141:18, 142:8, 150:3, 211:19  <b>put</b> [52] - 10:2, 11:19, 13:16, 15:11, 16:22, 16:24, 17:5, 17:6, 18:13, 21:6, 23:25, 24:10, 26:8, 27:3, 27:4, 28:7, 29:13, 30:15, 35:21, 35:22, 41:13, 41:16, 42:7, 42:9, 44:2, 84:24, 90:13, 91:25, 109:18, 112:23, 113:15, 113:17, 114:9, 116:9, 116:10, 116:15, 127:10, 128:21, 142:4, 143:9, 151:12, 153:1, 168:12, 172:25, 183:11, 186:15, 186:17, 191:1, 191:20, 192:22, 204:19, 205:17  <b>puts</b> [1] - 143:7  <b>putting</b> [7] - 33:23, 34:23, 68:1, 84:25, 85:10, 206:5, 211:20</p>	<p>120:11, 152:17, 173:21  <b>QUALITY</b> [1] - 1:6  <b>quantification</b> [1] - 52:20  <b>quantify</b> [1] - 53:14  <b>quantities</b> [1] - 10:9  <b>Quebedeaux</b> [42] - 39:10, 39:12, 39:17, 39:20, 40:3, 84:16, 93:7, 93:20, 93:23, 94:1, 94:8, 94:13, 94:19, 95:16, 96:5, 96:22, 96:25, 97:8, 97:12, 97:22, 97:24, 98:9, 98:10, 98:20, 100:5, 100:6, 100:22, 101:1, 101:15, 101:25, 102:17, 103:19, 106:9, 107:5, 115:18, 132:20, 198:11, 200:5, 208:6, 208:8, 208:14, 209:3  <b>Quebedeaux's</b> [10] - 93:16, 95:2, 95:15, 98:5, 101:12, 102:12, 104:14, 197:23, 198:23, 200:1  <b>QUESTION</b> [8] - 47:19, 57:19, 58:16, 88:3, 88:5, 88:8, 88:11, 88:15  <b>questions</b> [28] - 5:14, 19:17, 22:15, 24:12, 25:2, 31:5, 31:6, 36:23, 37:25, 38:20, 39:12, 45:25, 46:3, 61:2, 64:9, 66:11, 85:22, 128:5, 133:16, 137:15, 180:13, 180:21, 188:1, 207:19, 208:5, 209:5, 209:15, 209:20  <b>QUESTIONS</b> [5] - 74:25, 129:18, 137:21, 208:4, 209:22  <b>quick</b> [1] - 188:19  <b>quickly</b> [3] - 137:24, 162:7, 173:13  <b>quite</b> [2] - 108:4, 160:23</p>	<p><b>rained</b> [1] - 109:9  <b>rainfall</b> [5] - 107:19, 117:8, 117:13, 117:17, 123:1  <b>raise</b> [3] - 9:25, 20:1, 74:20  <b>raised</b> [3] - 15:7, 18:8, 34:12  <b>raises</b> [1] - 144:4  <b>raising</b> [2] - 17:16, 31:15  <b>ran</b> [1] - 91:9  <b>range</b> [6] - 68:6, 68:14, 68:22, 68:25, 69:6, 69:11  <b>ranked</b> [1] - 150:4  <b>ranges</b> [2] - 149:15, 149:20  <b>rapidly</b> [7] - 120:13, 121:2, 121:4, 122:14, 122:25, 123:21, 124:9  <b>rather</b> [8] - 23:1, 68:2, 79:23, 122:9, 162:11, 172:18, 180:17, 213:8  <b>re</b> [2] - 5:18, 152:4  <b>re-reviewed</b> [1] - 5:18  <b>reached</b> [1] - 195:1  <b>react</b> [1] - 173:6  <b>reacting</b> [1] - 30:23  <b>read</b> [16] - 50:9, 69:7, 69:21, 70:20, 83:20, 86:21, 98:19, 103:4, 132:1, 157:16, 157:18, 171:25, 196:17, 198:22, 199:1, 199:6  <b>reading</b> [11] - 38:15, 52:9, 56:19, 56:20, 56:21, 56:24, 57:8, 59:1, 59:11, 94:22, 186:10  <b>readings</b> [1] - 190:3  <b>reads</b> [1] - 50:22  <b>ready</b> [1] - 74:12  <b>real</b> [4] - 59:24, 154:13, 186:1, 187:15  <b>realize</b> [1] - 148:16  <b>realized</b> [1] - 172:19  <b>really</b> [30] - 11:25, 12:14, 14:19, 24:23, 25:24, 30:24, 36:2, 41:3, 42:7, 51:17, 52:17, 78:13, 79:10, 90:6, 93:4, 114:7, 117:3, 131:17, 142:16, 154:12, 158:4, 168:4,</p>
<b>Q</b>				
<p><b>qualifies</b> [1] - 9:10  <b>qualitative</b> [3] - 190:6, 190:8, 191:11  <b>qualitatively</b> [1] - 190:13  <b>Quality</b> [1] - 136:7  <b>quality</b> [6] - 68:13, 68:24, 70:24,</p>				
<b>R</b>				
<p><b>rain</b> [2] - 109:8, 122:1</p>				

<p>171:11, 179:25, 184:20, 192:1, 193:13, 202:11, 204:2</p> <p><b>reason</b> [9] - 11:13, 28:2, 28:17, 42:5, 42:17, 42:19, 93:13, 181:23, 186:16</p> <p><b>reasonable</b> [5] - 56:9, 56:10, 59:15, 72:24, 74:2</p> <p><b>REASONER</b> [36] - 3:8, 11:2, 72:3, 72:9, 73:9, 137:18, 137:21, 138:3, 142:4, 143:17, 144:18, 145:8, 146:24, 147:8, 148:2, 150:24, 151:25, 153:17, 153:21, 157:7, 160:13, 162:14, 165:22, 166:15, 167:22, 169:3, 171:15, 177:12, 181:5, 181:11, 182:2, 205:14, 205:21, 209:17, 211:1, 211:13</p> <p><b>Reasoner</b> [4] - 11:5, 137:17, 138:8, 177:15</p> <p><b>reasons</b> [10] - 19:16, 22:14, 25:13, 25:18, 69:17, 71:23, 72:6, 72:10, 140:12, 140:13</p> <p><b>rebut</b> [1] - 44:2</p> <p><b>rebutting</b> [1] - 48:23</p> <p><b>receive</b> [7] - 83:8, 83:17, 84:2, 106:15, 153:3, 155:5, 163:13</p> <p><b>received</b> [7] - 70:21, 83:23, 156:13, 156:25, 157:22, 157:24, 163:17</p> <p><b>receiving</b> [2] - 157:3</p> <p><b>recent</b> [3] - 172:2, 172:3, 172:19</p> <p><b>recently</b> [1] - 173:25</p> <p><b>recess</b> [1] - 210:19</p> <p><b>recognize</b> [1] - 100:19</p> <p><b>recognizing</b> [1] - 93:16</p> <p><b>recollection</b> [1] - 131:14</p> <p><b>recommendation</b> [1] - 54:24</p> <p><b>reconsider</b> [1] - 42:25</p> <p><b>reconstruct</b> [3] -</p>	<p>44:10, 44:11, 44:21</p> <p><b>RECORD</b> [2] - 1:1, 1:13</p> <p><b>record</b> [36] - 5:5, 5:22, 8:7, 8:11, 8:12, 8:13, 8:14, 10:16, 10:17, 13:5, 13:12, 13:14, 31:16, 55:25, 56:2, 56:4, 63:20, 65:16, 65:17, 65:18, 67:8, 67:9, 69:8, 69:22, 70:5, 70:8, 133:24, 182:24, 193:10, 210:25, 211:19, 211:20, 212:1, 212:3, 212:4, 214:9</p> <p><b>Record</b> [3] - 1:21, 215:10, 215:14</p> <p><b>recording</b> [2] - 96:4, 97:7</p> <p><b>Records</b> [1] - 146:10</p> <p><b>records</b> [12] - 13:3, 13:17, 14:4, 43:20, 44:10, 44:19, 44:22, 117:15, 118:18, 130:10</p> <p><b>recover</b> [4] - 73:5, 73:7, 145:16, 155:18</p> <p><b>recovering</b> [1] - 199:14</p> <p><b>recovery</b> [2] - 73:16, 149:13</p> <p><b>redact</b> [1] - 20:1</p> <p><b>redacted</b> [5] - 17:15, 41:12, 211:4, 211:8, 211:9</p> <p><b>redactions</b> [3] - 17:19, 211:10, 211:14</p> <p><b>redeveloping</b> [1] - 161:12</p> <p><b>REDIRECT</b> [1] - 208:3</p> <p><b>redwell</b> [1] - 69:13</p> <p><b>refer</b> [3] - 17:7, 153:8, 166:6</p> <p><b>reference</b> [6] - 60:1, 151:15, 151:16, 151:17, 174:19, 174:20</p> <p><b>referenced</b> [4] - 16:22, 42:4, 65:23, 137:9</p> <p><b>references</b> [1] - 59:9</p> <p><b>referencing</b> [4] - 40:7, 61:25, 69:4, 173:17</p> <p><b>referred</b> [4] - 17:8, 140:10, 201:17, 213:12</p> <p><b>referring</b> [9] - 17:9, 17:10, 97:23, 103:7, 107:12, 134:20, 138:16, 179:24,</p>	<p>209:9</p> <p><b>refers</b> [3] - 23:6, 57:16, 96:12</p> <p><b>reflect</b> [2] - 131:23, 146:19</p> <p><b>reflected</b> [1] - 192:13</p> <p><b>reflecting</b> [2] - 188:14, 188:15</p> <p><b>reflects</b> [4] - 88:24, 113:22, 165:3, 215:14</p> <p><b>refresh</b> [2] - 96:14, 131:14</p> <p><b>regard</b> [27] - 5:24, 6:2, 6:7, 6:25, 7:8, 7:14, 7:17, 8:19, 9:23, 10:6, 22:15, 24:15, 36:10, 48:12, 70:13, 72:16, 121:22, 130:15, 131:15, 133:16, 133:17, 133:24, 160:20, 179:6, 179:23, 211:22, 211:25</p> <p><b>regarding</b> [8] - 56:25, 57:25, 65:5, 70:22, 88:22, 89:7, 90:6, 180:5</p> <p><b>regardless</b> [1] - 111:2</p> <p><b>registered</b> [1] - 75:7</p> <p><b>regulating</b> [2] - 36:11, 36:12</p> <p><b>regulation</b> [1] - 120:21</p> <p><b>regulations</b> [24] - 78:7, 78:20, 79:19, 79:20, 79:22, 79:23, 80:6, 80:8, 80:11, 80:12, 81:16, 84:11, 89:12, 89:18, 90:6, 90:8, 92:6, 105:7, 105:8, 105:16, 179:23, 179:25, 180:5, 182:16</p> <p><b>regulators</b> [1] - 175:25</p> <p><b>regulatory</b> [1] - 129:12</p> <p><b>reincarnation</b> [1] - 152:15</p> <p><b>relate</b> [2] - 38:22, 130:2</p> <p><b>related</b> [2] - 41:8, 52:22</p> <p><b>relates</b> [2] - 18:17, 22:18</p> <p><b>relating</b> [2] - 17:20, 101:25</p> <p><b>relation</b> [2] - 162:17, 162:18</p> <p><b>relationship</b> [2] - 80:10, 80:22</p> <p><b>relayed</b> [2] - 96:22,</p>	<p>97:24</p> <p><b>release</b> [2] - 111:22, 209:2</p> <p><b>released</b> [3] - 128:25, 176:23, 181:1</p> <p><b>releases</b> [12] - 24:24, 25:1, 25:5, 25:10, 26:5, 27:19, 176:21, 200:12, 206:16, 207:1, 207:6, 208:16</p> <p><b>releasing</b> [1] - 178:20</p> <p><b>relevance</b> [3] - 23:13, 63:3, 182:5</p> <p><b>relevant</b> [13] - 15:25, 18:5, 20:9, 21:25, 24:21, 24:22, 39:23, 63:13, 63:14, 64:14, 182:2, 182:20, 192:1</p> <p><b>relief</b> [2] - 74:4, 74:5</p> <p><b>rely</b> [1] - 190:9</p> <p><b>relying</b> [1] - 136:1</p> <p><b>remain</b> [1] - 191:20</p> <p><b>remainder</b> [1] - 41:8</p> <p><b>remarks</b> [1] - 63:8</p> <p><b>remediation</b> [1] - 82:6</p> <p><b>remember</b> [15] - 24:17, 32:12, 42:23, 183:7, 185:19, 188:16, 188:18, 189:5, 190:17, 190:18, 191:21, 192:5, 194:21, 198:7, 210:21</p> <p><b>remind</b> [3] - 101:16, 101:20, 136:5</p> <p><b>removal</b> [4] - 82:5, 89:21, 92:8, 98:1</p> <p><b>remove</b> [7] - 92:11, 108:17, 124:8, 145:2, 150:8, 150:16, 152:25</p> <p><b>removed</b> [11] - 45:12, 108:16, 114:23, 120:12, 123:4, 123:8, 142:20, 160:2, 160:4, 170:6, 170:7</p> <p><b>removing</b> [1] - 140:6</p> <p><b>render</b> [1] - 104:12</p> <p><b>renew</b> [1] - 161:18</p> <p><b>reoffer</b> [1] - 43:2</p> <p><b>reorient</b> [1] - 130:6</p> <p><b>rep</b> [1] - 64:20</p> <p><b>repeat</b> [1] - 6:14</p> <p><b>repeated</b> [2] - 26:16, 26:20</p> <p><b>repeatedly</b> [1] - 39:17</p> <p><b>repetitive</b> [1] - 38:24</p> <p><b>rephrase</b> [1] - 99:1</p> <p><b>replaces</b> [1] - 212:12</p>	<p><b>report</b> [7] - 69:9, 71:3, 117:4, 119:7, 119:9, 127:9, 208:10</p> <p><b>report'</b> [1] - 71:5</p> <p><b>reported</b> [10] - 1:21, 39:11, 41:8, 121:12, 121:14, 121:25, 122:13, 123:8, 164:17, 215:12</p> <p><b>reporter</b> [4] - 99:11, 195:8, 208:1, 210:16</p> <p><b>REPORTER</b> [1] - 196:5</p> <p><b>Reporter</b> [2] - 215:3, 215:22</p> <p><b>Reporter's</b> [3] - 1:21, 215:9, 215:13</p> <p><b>REPORTER'S</b> [2] - 1:1, 1:13</p> <p><b>reporting</b> [1] - 120:14</p> <p><b>reports</b> [2] - 83:3, 164:4</p> <p><b>represent</b> [3] - 127:1, 129:21, 138:12</p> <p><b>representative</b> [5] - 32:3, 32:4, 77:22, 86:8, 196:18</p> <p><b>representatives</b> [1] - 164:11</p> <p><b>represented</b> [1] - 87:12</p> <p><b>representing</b> [2] - 82:15</p> <p><b>represents</b> [1] - 167:1</p> <p><b>reps</b> [2] - 30:9, 64:14</p> <p><b>request</b> [7] - 18:24, 19:10, 19:12, 152:4, 161:15, 170:16, 176:3</p> <p><b>requested</b> [3] - 71:7, 170:20, 215:8</p> <p><b>requesting</b> [2] - 160:17, 175:25</p> <p><b>require</b> [5] - 92:22, 93:8, 102:11, 155:6, 206:24</p> <p><b>required</b> [15] - 34:18, 34:21, 73:3, 74:5, 80:11, 93:6, 108:21, 111:22, 133:19, 155:7, 178:15, 181:9, 182:17, 209:8, 209:12</p> <p><b>requirement</b> [9] - 93:11, 95:7, 95:14, 100:15, 104:25, 129:11, 129:15, 152:24, 155:4</p> <p><b>requirements</b> [5] - 88:16, 93:14,</p>
---	---	--	--	---

<p>133:12, 135:21, 137:5</p> <p><b>requires</b> [2] - 6:20, 178:23</p> <p><b>research</b> [3] - 75:17, 77:6, 176:7</p> <p><b>resembled</b> [1] - 125:4</p> <p><b>reserve</b> [1] - 9:25</p> <p><b>residents</b> [1] - 164:7</p> <p><b>resolved</b> [2] - 83:4, 179:2</p> <p><b>resource</b> [1] - 161:25</p> <p><b>resources</b> [5] - 152:3, 152:8, 152:23, 161:25, 211:6</p> <p><b>respect</b> [17] - 5:9, 5:16, 17:19, 18:9, 19:14, 35:11, 44:5, 105:5, 139:14, 139:22, 139:25, 145:19, 174:10, 175:4, 175:13, 189:21, 204:15</p> <p><b>respectfully</b> [1] - 161:14</p> <p><b>respond</b> [2] - 26:7, 26:15</p> <p><b>responded</b> [1] - 164:11</p> <p><b>respondents</b> [1] - 16:21</p> <p><b>response</b> [3] - 20:7, 78:7, 80:12</p> <p><b>responses</b> [1] - 17:4</p> <p><b>responsibilities</b> [1] - 94:16</p> <p><b>responsibility</b> [3] - 78:6, 85:23, 87:19</p> <p><b>responsible</b> [3] - 86:10, 86:19, 172:4</p> <p><b>responsiveness</b> [1] - 36:19</p> <p><b>rest</b> [5] - 22:17, 31:19, 38:24, 60:5, 127:15</p> <p><b>restoration</b> [3] - 161:11, 163:1, 169:16</p> <p><b>restriction</b> [1] - 199:19</p> <p><b>restrictive</b> [1] - 38:15</p> <p><b>rests</b> [1] - 71:13</p> <p><b>result</b> [7] - 39:25, 54:7, 194:9, 195:21, 196:9, 206:19, 208:15</p> <p><b>results</b> [2] - 42:10, 149:8</p> <p><b>retained</b> [3] - 81:13, 82:14, 86:25</p> <p><b>return</b> [3] - 107:20, 111:15, 116:12</p>	<p><b>returned</b> [3] - 79:10, 116:21, 177:3</p> <p><b>reurge</b> [1] - 43:8</p> <p><b>revealed</b> [1] - 166:2</p> <p><b>reverse</b> [1] - 136:12</p> <p><b>review</b> [24] - 16:9, 69:25, 99:4, 99:24, 106:5, 118:5, 119:12, 128:8, 129:7, 130:9, 132:12, 133:23, 138:23, 146:7, 146:18, 153:10, 154:7, 156:23, 157:25, 163:21, 170:3, 171:20, 176:15, 176:18</p> <p><b>reviewed</b> [13] - 5:18, 19:17, 20:17, 84:14, 89:10, 96:1, 102:19, 133:20, 134:17, 147:1, 202:17, 202:22, 205:19</p> <p><b>reviews</b> [1] - 171:10</p> <p><b>revision</b> [1] - 28:19</p> <p><b>revisit</b> [2] - 5:14, 28:16</p> <p><b>Richmond</b> [1] - 94:17</p> <p><b>rid</b> [1] - 118:14</p> <p><b>ride</b> [1] - 141:25</p> <p><b>ridge</b> [3] - 106:20, 106:23, 106:24</p> <p><b>rightly</b> [1] - 10:20</p> <p><b>rise</b> [2] - 109:4, 114:11</p> <p><b>risk</b> [1] - 118:16</p> <p><b>River</b> [24] - 69:9, 97:10, 104:3, 145:24, 148:14, 154:6, 164:18, 165:17, 166:2, 174:2, 174:9, 177:4, 186:2, 189:7, 189:10, 189:13, 191:2, 191:18, 194:12, 195:2, 195:3, 203:6, 203:11, 206:11</p> <p><b>river</b> [19] - 28:7, 52:22, 54:9, 101:11, 101:23, 104:17, 106:15, 115:4, 141:10, 151:10, 164:8, 169:12, 181:1, 181:13, 194:13, 194:14, 198:13, 199:5, 207:10</p> <p><b>roads</b> [1] - 140:23</p> <p><b>Robert</b> [3] - 74:19, 75:5, 102:23</p> <p><b>ROBERT</b> [1] - 74:22</p>	<p><b>Roberts</b> [9] - 151:16, 151:20, 151:21, 152:21, 154:3, 155:11, 167:4, 170:20, 175:12</p> <p><b>roberts</b> [6] - 148:21, 152:4, 159:20, 160:9, 170:11, 170:17</p> <p><b>Roberts'</b> [5] - 142:7, 170:23, 174:19, 176:6, 176:9</p> <p><b>ROBIN</b> [1] - 3:8</p> <p><b>rOCK</b> [1] - 2:14</p> <p><b>Roderick</b> [5] - 96:6, 96:9, 102:23, 102:24</p> <p><b>rods</b> [1] - 166:8</p> <p><b>role</b> [6] - 80:14, 81:4, 82:23, 93:4, 130:6, 133:3</p> <p><b>room</b> [6] - 116:8, 116:10, 117:9, 117:10, 117:22, 118:2</p> <p><b>rose</b> [1] - 112:12</p> <p><b>ROSS</b> [1] - 3:11</p> <p><b>rotoclon</b> [1] - 108:20</p> <p><b>roughly</b> [2] - 153:25, 197:4</p> <p><b>rule</b> [10] - 7:2, 28:9, 37:10, 38:12, 38:15, 41:4, 43:3, 128:23</p> <p><b>ruled</b> [4] - 7:16, 8:18, 8:23, 23:21</p> <p><b>rules</b> [2] - 65:4, 105:8</p> <p><b>ruling</b> [9] - 7:18, 8:4, 8:10, 8:21, 10:15, 23:15, 31:15, 67:17, 70:2</p> <p><b>rulings</b> [6] - 5:8, 7:23, 8:16, 65:7, 67:15, 69:18</p> <p><b>run</b> [2] - 50:2, 100:3</p> <p><b>running</b> [2] - 81:2, 90:3</p> <p><b>runoff</b> [2] - 123:1, 187:4</p> <p><b>runs</b> [3] - 13:25, 46:21, 99:25</p> <p><b>RYAN</b> [1] - 2:11</p> <p><b>Ryan</b> [1] - 26:13</p> <p><b>Ryan's</b> [2] - 29:8, 30:12</p>	<p>211:5</p> <p><b>sampling</b> [2] - 43:15, 70:23</p> <p><b>Samuel</b> [1] - 68:13</p> <p><b>San</b> [24] - 69:9, 97:10, 104:3, 145:24, 148:13, 154:6, 164:18, 165:17, 166:2, 174:2, 174:9, 177:4, 186:1, 189:7, 189:10, 189:13, 191:2, 191:18, 194:11, 195:1, 195:3, 203:6, 203:11, 206:10</p> <p><b>Sand</b> [4] - 164:17, 164:20, 172:23, 204:8</p> <p><b>sand</b> [35] - 141:1, 141:9, 141:14, 141:15, 143:1, 143:13, 143:16, 147:7, 149:13, 149:14, 149:15, 149:17, 149:19, 149:22, 149:23, 150:3, 150:7, 150:9, 150:17, 154:11, 155:19, 155:23, 158:14, 159:16, 160:2, 161:19, 162:13, 164:18, 168:12, 170:1, 172:3, 172:19, 176:23</p> <p><b>sandbar</b> [1] - 174:1</p> <p><b>sandy</b> [1] - 149:18</p> <p><b>satisfactory</b> [1] - 98:1</p> <p><b>saw</b> [11] - 103:22, 129:9, 139:12, 139:17, 158:3, 164:9, 176:11, 193:3, 193:9, 198:5</p> <p><b>scar</b> [3] - 148:25, 149:2</p> <p><b>scene</b> [1] - 164:23</p> <p><b>schematically</b> [1] - 114:7</p> <p><b>schematics</b> [2] - 109:24, 142:19</p> <p><b>school</b> [7] - 76:7, 76:8, 76:15, 76:18, 76:21, 76:23, 77:1</p> <p><b>SCHRADER</b> [2] - 3:19, 54:12</p> <p><b>science</b> [1] - 76:13</p> <p><b>scientific</b> [1] - 26:4</p> <p><b>scope</b> [1] - 23:16</p> <p><b>screen</b> [3] - 15:11, 16:6, 192:22</p>	<p><b>screening</b> [1] - 69:8</p> <p><b>scroll</b> [6] - 147:8, 147:16, 157:2, 157:7, 165:17, 188:22</p> <p><b>scrolling</b> [1] - 153:3</p> <p><b>scrutinize</b> [1] - 9:16</p> <p><b>se</b> [1] - 31:1</p> <p><b>search</b> [2] - 53:3, 146:11</p> <p><b>searching</b> [1] - 52:3</p> <p><b>seated</b> [7] - 70:11, 71:19, 74:16, 128:1, 177:25, 183:1, 195:10</p> <p><b>second</b> [22] - 12:18, 12:21, 25:8, 56:1, 58:4, 59:5, 72:20, 95:11, 96:12, 101:14, 120:12, 121:23, 131:20, 147:17, 156:4, 159:1, 165:4, 170:22, 173:22, 174:25, 178:14, 214:6</p> <p><b>secondly</b> [1] - 20:18</p> <p><b>section</b> [10] - 113:19, 114:6, 114:18, 114:19, 128:22, 129:3, 130:24, 159:4, 163:15, 197:11</p> <p><b>Section</b> [1] - 9:13</p> <p><b>sectors</b> [1] - 113:5</p> <p><b>sediment</b> [3] - 47:18, 50:14, 174:8</p> <p><b>sediments</b> [2] - 50:11, 70:23</p> <p><b>see</b> [72] - 34:18, 35:17, 39:12, 56:22, 57:6, 58:1, 58:12, 87:17, 91:10, 94:5, 100:7, 100:8, 107:4, 114:20, 115:3, 115:21, 117:4, 118:5, 127:12, 129:6, 131:21, 136:25, 139:21, 142:1, 145:4, 145:5, 145:10, 151:1, 151:17, 152:5, 154:24, 157:2, 157:9, 157:10, 159:2, 159:24, 162:16, 163:10, 164:19, 165:13, 166:13, 167:8, 168:6, 168:21, 168:22, 169:13,</p>
--	---	--	---	---

## S

**sadly** [1] - 26:25

**sale** [1] - 164:18

**sample** [1] - 49:15

**samples** [2] - 147:23,

<p>169:16, 169:18, 169:25, 170:14, 172:21, 173:15, 174:19, 174:20, 175:11, 184:8, 187:16, 188:7, 188:22, 188:25, 189:6, 193:15, 199:8, 202:4, 202:6, 202:19, 203:5, 204:13, 204:16, 205:2, 208:13</p> <p><b>seeing</b> [6] - 46:15, 94:24, 183:18, 185:15, 185:19, 188:23</p> <p><b>seek</b> [7] - 23:19, 24:18, 29:2, 32:6, 36:6, 92:19, 92:21</p> <p><b>seeking</b> [2] - 24:9, 95:15</p> <p><b>seep</b> [1] - 122:5</p> <p><b>seepage</b> [2] - 101:11, 104:12</p> <p><b>sees</b> [1] - 13:3</p> <p><b>segregate</b> [1] - 207:5</p> <p><b>segregated</b> [2] - 116:11, 116:20</p> <p><b>selection</b> [2] - 106:6</p> <p><b>semesters</b> [2] - 76:21, 77:1</p> <p><b>send</b> [3] - 83:13, 83:16, 210:21</p> <p><b>sending</b> [1] - 19:25</p> <p><b>sends</b> [1] - 174:18</p> <p><b>senior</b> [2] - 77:8</p> <p><b>sense</b> [3] - 43:18, 74:5, 184:1</p> <p><b>sent</b> [8] - 13:15, 16:19, 16:23, 16:25, 18:22, 94:4, 111:23, 146:6</p> <p><b>sentence</b> [11] - 16:16, 57:5, 121:12, 122:12, 153:6, 165:23, 172:1, 173:23, 174:5, 186:5, 193:15</p> <p><b>separate</b> [1] - 69:13</p> <p><b>separated</b> [1] - 117:20</p> <p><b>separation</b> [4] - 92:1, 116:12, 120:4, 140:10</p> <p><b>September</b> [7] - 69:3, 69:11, 71:4, 130:12, 131:5, 131:25, 133:5</p> <p><b>sequentially</b> [1] - 187:7</p> <p><b>series</b> [1] - 187:7</p> <p><b>seriousness</b> [1] - 59:25</p>	<p><b>serve</b> [2] - 18:23, 186:7</p> <p><b>serves</b> [1] - 10:13</p> <p><b>service</b> [1] - 91:14</p> <p><b>set</b> [7] - 34:17, 68:2, 78:10, 108:16, 121:25, 123:5, 173:1</p> <p><b>sets</b> [1] - 34:7</p> <p><b>settle</b> [7] - 109:2, 109:3, 114:10, 119:21, 120:4, 121:3, 128:25</p> <p><b>settled</b> [7] - 108:15, 110:7, 110:8, 110:11, 112:7, 112:8, 114:15</p> <p><b>settling</b> [2] - 108:13, 114:23</p> <p><b>seven</b> [5] - 67:20, 69:14, 111:6, 173:14</p> <p><b>several</b> [7] - 23:12, 84:1, 93:23, 94:16, 94:18, 118:14, 180:19</p> <p><b>shaded</b> [1] - 126:25</p> <p><b>shear</b> [1] - 190:7</p> <p><b>sheer</b> [1] - 121:9</p> <p><b>sheet</b> [1] - 165:14</p> <p><b>shell</b> [7] - 140:22, 140:24, 141:9, 141:16, 141:17, 144:16, 159:16</p> <p><b>Ship</b> [8] - 70:25, 80:18, 90:14, 92:3, 92:4, 109:16, 111:5, 140:16</p> <p><b>shore</b> [2] - 142:24, 144:14</p> <p><b>shoreline</b> [4] - 140:9, 166:4, 166:12, 166:17</p> <p><b>short</b> [3] - 103:3, 121:25, 126:11</p> <p><b>show</b> [20] - 20:16, 24:5, 24:22, 28:3, 43:25, 63:4, 65:10, 81:19, 81:22, 85:25, 87:16, 113:1, 114:5, 142:8, 142:11, 143:24, 148:17, 156:25, 178:22, 192:21</p> <p><b>showed</b> [3] - 60:9, 89:14, 123:10</p> <p><b>showing</b> [6] - 12:17, 97:2, 112:16, 112:17, 113:18, 166:16</p> <p><b>shown</b> [9] - 13:4, 114:25, 117:23,</p>	<p>132:19, 153:24, 153:25, 163:1, 163:6, 187:12</p> <p><b>shows</b> [10] - 46:25, 58:4, 58:5, 59:4, 63:19, 112:19, 113:2, 114:6, 126:16, 165:7</p> <p><b>shut</b> [1] - 94:11</p> <p><b>side</b> [21] - 33:24, 76:6, 106:23, 106:24, 113:16, 113:22, 115:10, 124:24, 125:1, 127:10, 138:14, 142:13, 142:14, 144:25, 145:1, 145:2, 145:5, 194:4, 194:6, 202:25</p> <p><b>sides</b> [4] - 101:9, 104:11, 145:3, 182:19</p> <p><b>sign</b> [6] - 21:5, 21:10, 21:16, 155:7, 204:25, 205:5</p> <p><b>signed</b> [1] - 98:18</p> <p><b>significance</b> [4] - 99:14, 104:22, 106:4, 154:8</p> <p><b>significant</b> [3] - 129:2, 189:17, 211:5</p> <p><b>signify</b> [1] - 95:12</p> <p><b>silently</b> [1] - 63:18</p> <p><b>silt</b> [1] - 119:20</p> <p><b>silts</b> [1] - 110:5</p> <p><b>similar</b> [4] - 82:23, 87:12, 87:14, 143:4</p> <p><b>similarly</b> [4] - 8:23, 109:8, 127:17, 141:1</p> <p><b>simply</b> [3] - 8:4, 180:21, 214:3</p> <p><b>single</b> [2] - 49:9, 49:20</p> <p><b>Sipocz</b> [6] - 171:18, 171:19, 171:21, 172:6, 172:12, 172:17</p> <p><b>Sipozc's</b> [1] - 173:6</p> <p><b>sit</b> [1] - 193:7</p> <p><b>site</b> [155] - 20:22, 21:3, 21:9, 21:13, 25:5, 39:11, 39:12, 40:1, 40:2, 48:24, 49:15, 49:22, 52:23, 54:6, 54:7, 57:20, 57:21, 58:6, 69:9, 71:2, 71:5, 82:4, 82:6, 85:10, 85:11, 85:20, 85:24, 85:25, 87:20, 87:24, 88:1, 88:6, 88:13, 88:17, 88:21, 88:22, 89:7, 89:23,</p>	<p>90:24, 91:9, 100:7, 100:24, 102:2, 102:16, 103:11, 104:4, 104:19, 104:24, 105:2, 105:10, 105:18, 105:21, 106:6, 106:7, 106:8, 106:12, 106:21, 107:5, 107:13, 107:18, 108:23, 111:5, 111:20, 112:8, 112:18, 116:24, 118:4, 118:20, 119:8, 121:15, 121:19, 122:6, 124:16, 126:6, 126:12, 126:14, 129:13, 130:16, 132:23, 133:11, 133:14, 133:18, 133:25, 134:4, 134:5, 134:24, 135:12, 135:14, 135:23, 137:2, 137:6, 139:11, 139:15, 139:20, 139:22, 143:14, 145:19, 145:24, 146:10, 146:17, 148:6, 153:23, 154:1, 154:10, 155:17, 161:11, 162:17, 162:21, 163:4, 163:5, 163:6, 163:7, 165:13, 165:19, 166:1, 167:4, 167:25, 168:6, 168:8, 168:19, 168:20, 169:11, 171:8, 172:5, 172:21, 175:6, 176:19, 176:21, 177:1, 178:16, 178:21, 180:2, 181:1, 181:13, 184:19, 187:15, 188:14, 200:3, 200:6, 201:25, 202:2, 205:9, 206:3, 208:8, 208:15, 208:17, 209:25, 213:11, 213:13</p> <p><b>sites</b> [5] - 81:6, 81:11, 82:20, 187:11, 195:17</p> <p><b>situated</b> [1] - 130:4</p> <p><b>situation</b> [1] - 138:25</p> <p><b>situations</b> [1] - 81:5</p>	<p><b>size</b> [3] - 117:25, 143:8, 162:10</p> <p><b>sketch</b> [1] - 162:19</p> <p><b>skip</b> [1] - 29:5</p> <p><b>skipped</b> [1] - 45:9</p> <p><b>slay</b> [1] - 5:18</p> <p><b>slide</b> [15] - 81:20, 84:5, 84:24, 85:7, 86:2, 86:22, 88:10, 89:1, 112:15, 136:24, 142:5, 143:18, 144:18, 145:5, 145:9</p> <p><b>slides</b> [3] - 23:25, 24:11, 86:1</p> <p><b>slightly</b> [3] - 113:7, 113:9</p> <p><b>slip</b> [3] - 152:25, 168:11, 169:11</p> <p><b>sloped</b> [1] - 115:3</p> <p><b>sludge</b> [65] - 85:1, 85:16, 90:22, 96:14, 96:23, 98:11, 107:9, 107:13, 107:15, 108:8, 108:11, 110:9, 110:20, 110:23, 111:21, 112:1, 112:6, 112:11, 114:1, 114:14, 114:20, 115:2, 115:15, 115:24, 116:9, 116:10, 116:12, 116:15, 116:20, 116:25, 117:6, 117:7, 117:21, 117:22, 118:3, 119:25, 120:6, 126:23, 127:13, 127:17, 128:10, 132:4, 162:22, 168:6, 168:7, 168:22, 169:20, 178:10, 178:13, 179:12, 184:23, 185:1, 190:1, 190:22, 190:24, 195:24, 196:2, 196:11, 197:10, 197:18, 199:14, 206:17, 207:2, 209:10</p> <p><b>sludge-handling</b> [1] - 115:24</p> <p><b>sludges</b> [3] - 97:21, 108:13, 168:24</p> <p><b>slurry</b> [4] - 108:24, 111:9, 112:23, 140:8</p> <p><b>small</b> [2] - 143:8, 160:4</p>
--	--	--	---	--



<b>SMITH</b> [1] - 2:21 <b>so...</b> [1] - 38:1 <b>soil</b> [2] - 101:5, 147:22 <b>soils</b> [1] - 169:17 <b>sold</b> [1] - 78:23 <b>solely</b> [1] - 18:17 <b>solicited</b> [1] - 182:7 <b>soliciting</b> [1] - 156:8 <b>solid</b> [13] - 7:17, 7:19, 79:25, 80:6, 80:9, 90:7, 90:21, 93:4, 108:14, 121:3, 123:8, 143:13, 209:9 <b>Solid</b> [3] - 136:10, 136:11, 136:13 <b>solidified</b> [2] - 124:9, 127:16 <b>solidify</b> [3] - 120:13, 121:2, 123:20 <b>solids</b> [10] - 92:2, 108:25, 109:3, 110:25, 111:2, 111:9, 114:10, 120:5, 123:15, 125:19 <b>soluble</b> [1] - 119:20 <b>solution</b> [2] - 34:12, 110:13 <b>solve</b> [1] - 94:10 <b>solving</b> [1] - 81:3 <b>someone</b> [4] - 83:24, 89:14, 173:20, 182:15 <b>someplace</b> [1] - 91:11 <b>sometime</b> [2] - 149:1, 170:2 <b>sometimes</b> [1] - 87:13 <b>somewhat</b> [3] - 34:6, 201:7, 201:8 <b>somewhere</b> [4] - 55:14, 115:10, 184:8, 190:24 <b>sophomore</b> [1] - 77:1 <b>sorry</b> [14] - 14:8, 17:18, 32:1, 57:7, 88:9, 110:21, 110:23, 115:23, 157:9, 159:3, 183:12, 183:13, 185:18, 190:11 <b>sort</b> [7] - 99:19, 99:22, 110:3, 114:21, 121:24, 145:15, 202:25 <b>sorts</b> [1] - 42:15 <b>sought</b> [1] - 81:7 <b>sounds</b> [2] - 124:3, 180:16 <b>source</b> [12] - 49:4, 49:7, 49:9, 49:20,	51:16, 52:10, 53:14, 118:24, 132:23, 177:5, 195:2, 207:6 <b>sources</b> [2] - 120:20, 194:23 <b>south</b> [2] - 76:25, 173:2 <b>South</b> [1] - 75:25 <b>southern</b> [1] - 178:24 <b>space</b> [2] - 91:8, 91:9 <b>Spata</b> [7] - 134:10, 134:22, 147:12, 148:6, 148:11, 148:23, 155:14 <b>Spata's</b> [1] - 134:22 <b>Spatas</b> [1] - 187:12 <b>speaking</b> [4] - 9:2, 119:3, 196:23, 197:8 <b>special</b> [4] - 105:1, 156:20, 159:4, 159:5 <b>specific</b> [13] - 10:11, 36:23, 41:11, 42:24, 46:15, 48:24, 49:1, 66:17, 97:16, 103:13, 173:1, 180:5, 190:2 <b>specifically</b> [14] - 9:8, 9:22, 14:16, 21:5, 24:19, 33:23, 37:1, 48:22, 66:19, 103:10, 157:5, 179:14, 179:21, 189:20 <b>specifications</b> [1] - 119:24 <b>speculation</b> [2] - 36:4, 98:25 <b>spelled</b> [1] - 75:5 <b>spelling</b> [1] - 19:22 <b>spent</b> [3] - 79:5, 201:1, 201:4 <b>Spill</b> [5] - 5:10, 6:23, 10:6, 136:7, 136:16 <b>split</b> [1] - 48:4 <b>spoil</b> [1] - 153:1 <b>spoiled</b> [1] - 57:4 <b>spoliation</b> [1] - 44:7 <b>spot</b> [1] - 202:11 <b>spread</b> [1] - 122:14 <b>spreads</b> [1] - 122:25 <b>springing</b> [1] - 12:15 <b>spudded</b> [3] - 144:22, 166:2, 166:22 <b>spudding</b> [1] - 166:6 <b>spuds</b> [6] - 144:8, 144:9, 144:22, 166:20, 166:21, 166:23 <b>St</b> [1] - 76:2 <b>stabilize</b> [1] - 168:24	<b>stabilized</b> [3] - 119:1, 127:16, 141:16 <b>stabilizes</b> [1] - 124:6 <b>stand</b> [11] - 15:6, 22:4, 62:12, 105:13, 121:6, 121:9, 122:1, 122:9, 123:22, 182:7, 190:8 <b>standard</b> [2] - 17:25, 91:19 <b>standards</b> [3] - 153:8, 153:9, 153:11 <b>standing</b> [3] - 18:2, 122:20, 127:13 <b>standpoint</b> [2] - 129:12, 191:12 <b>stands</b> [1] - 70:2 <b>STANFIELD</b> [104] - 3:18, 10:20, 10:23, 11:10, 11:13, 11:18, 12:10, 12:14, 23:24, 24:22, 25:16, 25:24, 26:11, 28:9, 28:19, 28:24, 29:5, 30:24, 31:17, 31:21, 32:14, 32:18, 33:3, 33:7, 33:10, 33:20, 34:7, 35:4, 35:17, 36:2, 36:17, 39:1, 39:4, 39:20, 40:6, 40:10, 40:16, 40:21, 41:10, 41:19, 42:11, 42:14, 42:18, 43:8, 43:12, 44:13, 45:8, 45:17, 45:21, 45:24, 46:7, 46:14, 47:4, 47:13, 47:16, 48:14, 48:17, 48:20, 49:8, 49:17, 50:8, 51:10, 51:20, 51:25, 52:6, 52:18, 53:9, 53:19, 53:25, 54:10, 54:14, 54:23, 55:4, 55:22, 58:24, 59:12, 59:22, 60:9, 60:13, 60:21, 61:7, 61:13, 61:23, 62:11, 62:17, 63:4, 63:9, 63:15, 63:19, 63:24, 64:2, 64:6, 64:17, 64:21, 64:25, 65:19, 65:25, 66:15, 66:23, 67:4, 71:21, 72:11, 72:19, 178:1 <b>Stanfield</b> [4] - 39:19, 50:6, 51:14, 71:20 <b>start</b> [16] - 10:18, 10:19, 10:21, 22:23, 43:22, 46:22, 47:14, 52:25, 57:1, 61:9, 66:4, 139:1, 146:7,	179:3, 188:7, 188:8 <b>started</b> [11] - 46:25, 47:21, 91:16, 94:22, 105:23, 110:17, 122:13, 139:5, 140:15, 146:6, 146:22 <b>starting</b> [11] - 28:25, 33:11, 34:3, 41:1, 50:18, 57:12, 61:17, 64:3, 89:16, 110:3, 210:22 <b>starts</b> [5] - 23:11, 53:16, 54:2, 124:1, 160:22 <b>State</b> [7] - 36:12, 58:12, 75:8, 126:4, 133:13, 208:10, 215:5 <b>state</b> [16] - 20:18, 38:8, 68:6, 68:14, 68:19, 68:22, 68:25, 69:6, 69:11, 93:15, 119:7, 120:10, 133:17, 152:9, 156:9, 190:15 <b>STATE</b> [3] - 1:4, 2:17, 215:1 <b>statement</b> [8] - 20:11, 41:8, 53:16, 84:23, 85:2, 85:5, 89:14, 182:12 <b>statements</b> [1] - 182:7 <b>States</b> [5] - 71:1, 71:8, 78:5, 79:8, 80:21 <b>states</b> [2] - 14:17, 20:20 <b>stating</b> [1] - 11:22 <b>STATION</b> [1] - 2:19 <b>status</b> [2] - 17:22, 20:19 <b>statute</b> [4] - 6:17, 6:20, 73:15, 73:25 <b>statutes</b> [8] - 7:14, 9:4, 9:6, 9:7, 82:10, 135:25, 136:4, 136:6 <b>statutory</b> [1] - 7:1 <b>stay</b> [1] - 180:11 <b>stayed</b> [1] - 117:8 <b>stenotype</b> [1] - 1:21 <b>step</b> [10] - 20:13, 71:15, 111:4, 112:24, 115:7, 126:6, 127:22, 177:21, 177:23, 210:10 <b>stepped</b> [2] - 48:9, 178:21 <b>steps</b> [3] - 49:14, 51:5, 156:5	<b>Steve</b> [1] - 68:17 <b>stiff</b> [1] - 150:14 <b>still</b> [15] - 11:20, 13:4, 37:13, 78:25, 93:24, 123:16, 133:12, 141:17, 143:5, 146:17, 150:19, 168:21, 168:22, 186:17, 196:13 <b>stipulation</b> [4] - 21:22, 69:20, 70:19, 175:23 <b>stock</b> [1] - 78:22 <b>stood</b> [1] - 27:1 <b>stop</b> [4] - 12:20, 54:4, 63:5, 66:9 <b>stopped</b> [2] - 126:12, 139:20 <b>stopping</b> [1] - 62:23 <b>storage</b> [2] - 184:23, 187:9 <b>stored</b> [1] - 127:18 <b>storing</b> [1] - 97:9 <b>strata</b> [2] - 149:14, 149:17 <b>STRAWN</b> [1] - 4:5 <b>stream</b> [2] - 95:4, 120:1 <b>streams</b> [3] - 90:17, 90:18, 91:3 <b>STREET</b> [3] - 2:5, 3:15, 4:6 <b>strength</b> [7] - 121:7, 121:9, 121:22, 189:20, 189:23, 190:5, 190:7 <b>strike</b> [1] - 31:18 <b>strong</b> [1] - 124:5 <b>studied</b> [1] - 194:20 <b>study</b> [18] - 42:20, 70:24, 175:24, 194:23, 194:25, 195:19, 195:21, 196:9, 196:10, 197:1, 197:3, 197:4, 197:7, 197:8, 197:13, 197:17, 203:23, 203:25 <b>stuff</b> [8] - 16:22, 48:10, 61:9, 114:22, 119:19, 121:1, 125:12, 169:25 <b>styled</b> [1] - 215:10 <b>subgrade</b> [2] - 144:23, 166:9 <b>subheading</b> [1] - 120:11 <b>subject</b> [8] - 37:13, 37:14, 38:2, 38:19, 41:1, 57:16, 132:10, 207:10
--	--	---	---	---

**submerged** [2] - 188:16, 203:5  
**submergence** [1] - 203:8  
**submitted** [1] - 71:6  
**submitting** [1] - 29:19  
**subsidiary** [1] - 21:24  
**substance** [4] - 42:6, 42:22, 142:21, 195:14  
**subsurface** [3] - 147:5, 155:13, 169:17  
**Subsurface** [1] - 155:24  
**successfully** [1] - 121:14  
**suck** [2] - 143:9, 150:15  
**sucked** [1] - 142:21  
**suction** [8] - 142:18, 143:2, 143:5, 144:4, 144:6, 150:15, 150:18, 150:22  
**suffer** [1] - 6:5  
**sufficient** [2] - 178:17, 189:17  
**sufficiently** [1] - 124:5  
**suggest** [4] - 27:11, 28:19, 44:2, 122:3  
**suggested** [1] - 26:24  
**suggestion** [2] - 44:3, 44:20  
**suggestions** [2] - 26:16, 27:1  
**suggests** [2] - 173:25, 181:17  
**suit** [4] - 20:15, 20:17, 24:8, 29:23  
**SUITE** [2] - 3:6, 3:15  
**sulking** [1] - 122:20  
**summarize** [1] - 160:21  
**summary** [2] - 165:23, 165:25  
**summer** [1] - 117:14  
**Superfund** [10] - 22:7, 23:15, 81:6, 81:8, 81:11, 81:24, 82:1, 82:9, 82:20, 195:17  
**supersedes** [1] - 212:11  
**supervisor** [2] - 173:19, 173:20  
**support** [8] - 24:24, 28:6, 121:17, 121:21, 132:21, 168:25, 212:15, 213:4  
**suppose** [1] - 102:5

**supposed** [1] - 105:4  
**Supreme** [1] - 74:4  
**surface** [3] - 147:25, 189:10, 189:18  
**surprising** [1] - 120:22  
**surround** [1] - 124:4  
**surrounding** [1] - 147:13  
**survey** [14] - 49:11, 153:25, 188:13, 188:18, 192:13, 192:14, 192:21, 193:3, 193:11, 193:16, 193:18, 206:8, 206:12, 210:5  
**suspect** [1] - 55:13  
**suspected** [1] - 175:5  
**suspend** [1] - 71:9  
**suspended** [3] - 176:1, 176:6, 176:13  
**suspension** [1] - 176:9  
**sustain** [2] - 22:14, 43:1  
**sustained** [7] - 22:19, 43:9, 69:16, 70:3, 99:13, 211:21, 211:23  
**sworn** [2] - 74:21, 74:23  
**SYDNEY** [1] - 3:10  
**system** [19] - 70:25, 107:8, 107:14, 107:16, 107:20, 108:7, 108:14, 109:4, 109:14, 109:18, 113:5, 114:10, 115:17, 115:25, 116:19, 122:10, 128:20, 144:2, 187:6

## T

**T-r-a-n-s** [1] - 157:18  
**talks** [9] - 14:20, 16:9, 32:12, 52:19, 53:17, 101:9, 149:14, 156:7, 170:19  
**tank** [1] - 94:17  
**tCEQ** [1] - 68:11  
**TCEQ** [40] - 58:10, 62:9, 66:20, 67:12, 67:23, 68:4, 68:5, 68:16, 68:20, 68:21, 68:23, 69:1, 69:4, 69:8, 69:17, 69:24, 70:13, 70:17, 70:19, 70:21, 70:23, 71:5, 71:7, 71:13, 72:16, 72:21, 72:24, 73:1, 73:6, 73:14, 73:17, 73:19, 73:25, 152:18, 162:4, 173:21, 175:24, 206:6  
**technical** [1] - 77:22  
**technique** [3] - 98:3, 108:20, 140:6  
**techniques** [2] - 95:15, 189:25  
**technologies** [2] - 79:5, 79:7  
**technology** [1] - 79:4  
**telephone** [3] - 83:15, 96:21, 164:12  
**telltale** [1] - 173:3  
**tendered** [1] - 215:15  
**tensile** [4] - 189:20, 189:23, 190:5, 190:7  
**tension** [1] - 6:19  
**term** [1] - 39:22  
**terminal** [14] - 148:18, 148:20, 148:24, 149:3, 160:10, 162:20, 163:7, 164:21, 166:12, 166:25, 169:6, 169:10, 174:21, 177:1  
**Terminal** [3] - 154:2, 168:11, 194:15  
**terminals** [1] - 166:4  
**Terminated** [1] - 212:18  
**terminated** [3] - 200:4, 212:17, 214:1  
**termination** [1] - 213:15  
**terminology** [1] - 166:21  
**terms** [13] - 17:22, 42:8, 43:13, 69:18, 80:10, 104:1, 146:12, 146:16, 146:18, 146:19, 154:1, 196:14, 197:9  
**test** [3] - 42:10, 160:3, 168:17  
**testified** [4] - 74:23, 86:5, 178:14, 181:25  
**testifies** [1] - 55:2  
**testify** [3] - 23:16, 36:9, 83:1  
**testifying** [2] - 36:9, 60:16  
**testimony** [35] - 10:12, 14:21, 15:5, 22:17, 25:22, 28:13, 33:18,

40:19, 41:12, 41:13, 42:24, 44:14, 46:15, 60:1, 64:22, 81:14, 83:4, 86:14, 86:21, 87:1, 87:17, 89:10, 92:9, 116:17, 117:2, 125:6, 131:21, 132:10, 136:24, 181:14, 193:4, 193:7, 193:11, 196:17  
**testing** [3] - 42:8, 42:15, 122:6  
**TEXAS** [14] - 1:4, 1:5, 1:5, 1:11, 2:6, 2:12, 2:17, 2:18, 2:19, 3:4, 3:6, 3:16, 4:6, 215:1  
**Texas** [67] - 1:20, 6:23, 8:22, 26:22, 26:23, 36:10, 36:12, 57:14, 58:12, 62:9, 66:20, 68:5, 68:12, 68:17, 68:23, 68:25, 70:21, 72:3, 72:10, 73:9, 75:8, 75:25, 76:1, 76:5, 80:9, 81:12, 81:16, 82:10, 90:15, 133:13, 136:10, 136:13, 136:16, 136:17, 136:19, 138:13, 139:10, 139:23, 152:2, 152:7, 152:10, 152:15, 152:16, 152:23, 153:7, 154:21, 157:14, 157:15, 157:19, 161:25, 171:9, 171:22, 173:13, 173:21, 173:24, 174:6, 174:18, 192:5, 205:13, 205:18, 206:5, 208:10, 215:5, 215:21, 215:23, 215:24  
**Texas'** [2] - 7:4, 9:11  
**Texas's** [1] - 6:12  
**THE** [227] - 1:4, 1:4, 2:3, 2:11, 2:17, 2:18, 3:4, 3:14, 5:5, 8:8, 8:11, 8:13, 10:18, 10:22, 10:25, 11:4, 11:6, 11:11, 11:17, 11:25, 12:5, 12:12, 12:20, 13:7, 13:11, 14:1, 14:10, 14:15, 15:2, 15:13, 17:2, 17:13, 18:12, 18:21, 19:3, 19:7, 22:13,

22:23, 23:3, 23:8, 24:14, 25:8, 25:23, 26:6, 26:12, 27:16, 28:11, 28:21, 29:4, 30:1, 31:3, 31:8, 31:20, 31:25, 32:10, 32:16, 33:2, 33:6, 33:17, 33:22, 35:1, 35:5, 35:19, 36:1, 36:13, 36:21, 37:19, 38:7, 38:16, 39:3, 39:6, 39:19, 40:4, 40:9, 40:12, 40:20, 40:24, 41:5, 41:25, 42:7, 42:12, 42:16, 42:23, 43:5, 43:9, 43:17, 43:25, 44:8, 44:17, 45:9, 45:13, 45:20, 45:22, 46:2, 46:11, 46:16, 46:22, 47:12, 47:15, 48:1, 48:5, 48:8, 48:12, 48:16, 49:6, 49:13, 50:5, 50:9, 50:18, 50:21, 50:25, 51:7, 51:11, 51:13, 51:23, 52:5, 52:11, 52:14, 53:6, 53:21, 54:5, 54:16, 55:3, 55:7, 55:16, 55:25, 56:3, 57:1, 57:9, 57:12, 58:25, 59:9, 59:24, 60:8, 60:12, 60:15, 60:19, 60:22, 61:1, 61:12, 61:16, 61:20, 61:25, 62:3, 62:13, 63:1, 63:12, 63:21, 63:25, 64:4, 64:10, 64:18, 64:23, 65:1, 65:16, 65:18, 65:24, 66:2, 66:8, 66:22, 67:3, 67:6, 67:9, 67:19, 68:9, 69:16, 70:1, 70:7, 70:11, 70:15, 71:14, 71:19, 72:14, 73:8, 74:8, 74:16, 74:20, 90:1, 90:5, 99:1, 99:9, 99:13, 105:14, 127:21, 128:1, 128:18, 135:18, 135:20, 137:16, 137:19, 138:7, 177:15, 177:20, 177:23, 178:4, 178:6, 179:4, 179:17, 179:22, 180:12, 181:15, 182:10, 182:24, 183:1, 187:23, 195:6, 195:10,

<p>207:20, 207:21, 207:24, 210:8, 210:10, 210:12, 210:13, 210:18, 210:25, 211:12, 211:21, 212:4, 212:14, 212:18, 212:20, 213:2, 213:14, 214:7, 215:1</p> <p><b>theme</b> [2] - 25:1, 34:9</p> <p><b>themselves</b> [1] - 83:4</p> <p><b>thereby</b> [1] - 76:21</p> <p><b>therefore</b> [5] - 20:21, 56:6, 73:6, 207:9, 213:12</p> <p><b>therein</b> [2] - 15:17, 15:24</p> <p><b>thereof</b> [1] - 58:11</p> <p><b>they've</b> [2] - 175:17, 211:13</p> <p><b>thick</b> [2] - 149:17, 149:24</p> <p><b>thickness</b> [3] - 149:16, 150:4, 155:23</p> <p><b>thinking</b> [3] - 27:23, 63:7, 201:22</p> <p><b>thinks</b> [1] - 61:6</p> <p><b>third</b> [10] - 64:8, 92:11, 120:9, 123:5, 131:9, 136:8, 152:14, 165:9, 171:25, 198:17</p> <p><b>thousand</b> [1] - 201:15</p> <p><b>thousands</b> [2] - 19:13, 139:6</p> <p><b>threat</b> [2] - 53:4, 211:5</p> <p><b>three</b> [12] - 7:14, 9:6, 9:7, 13:25, 129:23, 130:2, 135:25, 136:6, 183:21, 187:2, 203:22</p> <p><b>throughout</b> [2] - 26:16, 42:4</p> <p><b>thrust</b> [1] - 25:25</p> <p><b>tidal</b> [5] - 168:17, 173:3, 189:16, 203:23, 203:25</p> <p><b>tide</b> [8] - 155:17, 155:21, 155:22, 173:4, 188:19, 192:12, 193:16, 207:10</p> <p><b>tight</b> [1] - 117:11</p> <p><b>tip</b> [1] - 172:21</p> <p><b>tissue</b> [5] - 47:11, 50:4, 50:7, 50:23, 211:5</p> <p><b>title</b> [5] - 16:9, 133:24, 134:5, 134:7, 135:3</p>	<p><b>TMDL</b> [19] - 43:23, 45:3, 45:5, 45:16, 45:23, 46:4, 48:12, 48:18, 49:10, 49:16, 49:25, 51:17, 51:24, 53:18, 194:19, 194:23, 194:25, 211:22, 211:25</p> <p><b>today</b> [8] - 131:4, 131:12, 176:2, 183:9, 198:2, 198:22, 199:2, 201:4</p> <p><b>together</b> [6] - 13:16, 87:7, 87:13, 104:21, 108:25, 134:22</p> <p><b>tomorrow</b> [1] - 210:21</p> <p><b>tons</b> [2] - 160:2, 168:5</p> <p><b>took</b> [13] - 78:21, 100:5, 100:6, 112:21, 113:14, 118:24, 124:23, 133:7, 145:23, 183:5, 194:10, 195:19, 206:20</p> <p><b>top</b> [16] - 109:4, 112:5, 112:9, 114:16, 114:21, 120:9, 122:9, 127:13, 131:9, 134:15, 159:4, 162:19, 174:4, 178:11, 185:23</p> <p><b>Total</b> [1] - 70:24</p> <p><b>total</b> [2] - 201:3, 201:11</p> <p><b>toward</b> [2] - 115:3, 159:3</p> <p><b>TOWER</b> [1] - 2:5</p> <p><b>toxic</b> [4] - 42:17, 122:23, 178:9, 179:8</p> <p><b>toxicity</b> [1] - 122:25</p> <p><b>TPWD</b> [1] - 173:24</p> <p><b>tract</b> [7] - 20:22, 134:11, 147:14, 148:10, 148:11, 148:13, 155:16</p> <p><b>traffic</b> [2] - 106:15, 174:15</p> <p><b>transcription</b> [2] - 1:22, 215:7</p> <p><b>transfer</b> [5] - 110:15, 111:4, 135:3, 135:9, 140:9</p> <p><b>transferred</b> [5] - 108:22, 115:2, 134:7, 142:23, 169:25</p> <p><b>transferring</b> [2] - 97:20, 102:3</p> <p><b>transfers</b> [2] - 102:15,</p>	<p>145:13</p> <p><b>transport</b> [4] - 104:17, 106:10, 106:12, 207:12</p> <p><b>transportation</b> [2] - 157:17, 157:18</p> <p><b>TRAVIS</b> [1] - 2:5</p> <p><b>treatment</b> [5] - 80:1, 92:5, 109:18, 111:17, 180:9</p> <p><b>trees</b> [2] - 124:2, 179:6</p> <p><b>TRIAL</b> [1] - 1:2</p> <p><b>trial</b> [4] - 1:18, 27:2, 99:25, 100:2</p> <p><b>tribes</b> [1] - 156:10</p> <p><b>tricky</b> [1] - 28:12</p> <p><b>tried</b> [4] - 25:4, 180:10, 190:20</p> <p><b>trim</b> [1] - 33:14</p> <p><b>trip</b> [1] - 111:6</p> <p><b>trucks</b> [3] - 91:13, 106:11</p> <p><b>true</b> [1] - 215:6</p> <p><b>truly</b> [1] - 215:14</p> <p><b>trustee</b> [4] - 13:4, 134:11, 135:10, 184:18</p> <p><b>Trustee</b> [2] - 134:8, 134:25</p> <p><b>truth</b> [1] - 136:9</p> <p><b>try</b> [6] - 49:4, 49:7, 50:11, 52:10, 124:8, 139:2</p> <p><b>trying</b> [11] - 29:14, 30:24, 52:1, 66:18, 150:7, 151:20, 161:17, 180:16, 182:18, 188:23, 201:24</p> <p><b>TSUCHIYAMA</b> [1] - 2:8</p> <p><b>tube</b> [7] - 142:20, 142:22, 144:5, 144:6, 145:4, 145:5, 145:11</p> <p><b>turn</b> [6] - 89:9, 89:11, 105:17, 113:22, 120:8, 131:19</p> <p><b>turned</b> [2] - 91:10, 185:25</p> <p><b>turns</b> [2] - 117:24, 134:21</p> <p><b>twice</b> [2] - 35:2, 35:16</p> <p><b>two</b> [37] - 6:19, 13:24, 24:11, 25:10, 27:7, 44:24, 46:18, 67:12, 69:13, 70:16, 70:18, 71:22, 104:1, 113:5, 113:21, 117:23, 118:3, 130:21,</p>	<p>142:13, 142:14, 142:17, 142:19, 145:9, 153:6, 157:13, 157:23, 162:23, 163:8, 178:25, 198:14, 198:16, 203:4, 204:9, 211:4, 212:6, 213:3, 213:23</p> <p><b>type</b> [16] - 35:8, 35:14, 37:9, 79:15, 92:21, 100:10, 118:24, 119:14, 124:11, 124:21, 125:9, 132:19, 143:11, 144:25, 147:22, 205:24</p> <p><b>types</b> [4] - 142:11, 142:17, 151:6, 167:9</p> <p><b>typically</b> [1] - 140:10</p>	<p><b>United</b> [5] - 71:1, 71:8, 78:5, 79:8, 80:20</p> <p><b>University</b> [4] - 76:9, 76:12, 76:19, 93:25</p> <p><b>unless</b> [1] - 36:5</p> <p><b>unlike</b> [2] - 92:4, 158:15</p> <p><b>unloaded</b> [2] - 108:24, 109:17</p> <p><b>unloading</b> [1] - 113:21</p> <p><b>unreasonable</b> [1] - 27:15</p> <p><b>unredacted</b> [3] - 40:18, 178:18, 178:22</p> <p><b>unsolicited</b> [1] - 182:8</p> <p><b>unusual</b> [7] - 91:21, 92:13, 92:19, 92:24, 100:14, 105:3, 146:10</p> <p><b>up</b> [76] - 16:9, 23:2, 25:4, 25:19, 26:17, 27:1, 29:13, 34:7, 34:17, 40:17, 42:2, 43:12, 43:13, 43:17, 46:5, 48:4, 51:1, 51:4, 53:8, 53:24, 63:19, 78:10, 79:3, 79:14, 82:4, 84:24, 90:17, 94:7, 94:21, 97:1, 102:9, 108:3, 108:16, 112:13, 112:17, 112:20, 113:4, 114:19, 114:20, 120:9, 123:10, 124:24, 126:21, 131:8, 134:13, 134:15, 136:23, 137:24, 142:4, 142:21, 142:22, 143:7, 143:9, 148:12, 154:25, 157:2, 159:3, 163:4, 164:22, 171:7, 177:18, 183:11, 185:11, 185:22, 192:22, 193:12, 197:15, 198:20, 201:18, 201:25, 203:2, 205:10, 205:17, 205:21, 206:24, 211:24</p> <p><b>upcoming</b> [1] - 20:24</p> <p><b>upper</b> [8] - 112:16, 112:22, 113:10, 113:23, 113:25, 114:14, 126:17, 126:18</p> <p><b>urge</b> [1] - 72:24</p>
<b>U</b>				
<p><b>U.S</b> [1] - 16:3</p> <p><b>UAO</b> [3] - 16:22, 20:23, 31:22</p> <p><b>ultimate</b> [2] - 98:17, 106:2</p> <p><b>ultimately</b> [8] - 42:10, 79:21, 106:7, 148:19, 148:22, 161:9, 162:3, 176:6</p> <p><b>um-hmm</b> [1] - 41:25</p> <p><b>unbiased</b> [1] - 26:4</p> <p><b>unclear</b> [1] - 16:10</p> <p><b>under</b> [28] - 5:10, 9:4, 9:6, 9:8, 9:10, 16:21, 18:1, 37:10, 43:3, 55:13, 73:24, 79:12, 82:10, 91:15, 143:10, 155:23, 157:11, 159:3, 159:22, 160:23, 164:5, 165:8, 181:14, 184:19, 188:16, 191:17, 192:12, 213:10</p> <p><b>underneath</b> [3] - 189:10, 191:1, 203:10</p> <p><b>underwater</b> [4] - 58:22, 188:9, 202:7, 207:9</p> <p><b>unique</b> [1] - 6:15</p> <p><b>Unit</b> [1] - 103:23</p> <p><b>unit</b> [9] - 106:2, 107:9, 107:10, 107:13, 108:9, 109:7, 109:11, 126:24, 129:3</p>				

<b>US</b> <sup>[1]</sup> - 69:10 <b>useful</b> <sup>[4]</sup> - 106:25, 142:25, 150:3, 167:18 <b>uses</b> <sup>[1]</sup> - 102:14	65:7 <b>violating</b> <sup>[2]</sup> - 23:14, 182:11 <b>violation</b> <sup>[8]</sup> - 5:23, 9:3, 9:4, 9:6, 153:7, 153:11, 153:14, 182:13 <b>violations</b> <sup>[1]</sup> - 9:7 <b>Virgil</b> <sup>[7]</sup> - 12:17, 12:18, 13:3, 134:8, 134:10, 134:24, 187:13 <b>virtually</b> <sup>[3]</sup> - 81:11, 103:25, 120:19 <b>virtue</b> <sup>[3]</sup> - 194:14, 200:7, 214:1 <b>vis</b> <sup>[2]</sup> - 7:12 <b>vis-a-vis</b> <sup>[1]</sup> - 7:12 <b>visible</b> <sup>[2]</sup> - 94:2, 203:9 <b>visit</b> <sup>[3]</sup> - 119:8, 165:19, 166:1 <b>visited</b> <sup>[2]</sup> - 40:3, 94:19 <b>visually</b> <sup>[2]</sup> - 125:11, 202:4 <b>VOLUME</b> <sup>[2]</sup> - 1:1 <b>volume</b> <sup>[8]</sup> - 24:24, 71:3, 106:13, 120:2, 146:14, 154:14, 215:9 <b>Volume</b> <sup>[14]</sup> - 10:23, 11:11, 32:15, 32:18, 33:4, 33:8, 44:13, 46:19, 46:20, 48:2, 48:16, 48:18, 48:23, 49:18	79:25, 80:6, 80:9, 80:15, 81:10, 81:16, 84:12, 85:4, 85:11, 87:11, 88:17, 89:18, 89:21, 90:7, 90:11, 90:16, 90:17, 90:19, 90:21, 91:14, 91:22, 91:23, 92:11, 92:17, 93:4, 93:12, 97:9, 98:2, 99:22, 100:1, 100:13, 101:21, 101:22, 102:2, 102:6, 102:15, 102:16, 104:16, 104:18, 105:5, 106:2, 106:22, 107:7, 108:11, 110:7, 118:17, 118:18, 118:24, 119:2, 119:4, 119:14, 119:23, 120:20, 123:20, 128:10, 128:20, 129:4, 129:5, 130:13, 133:18, 137:6, 138:10, 138:15, 170:7, 174:1, 175:6, 177:3, 180:2, 180:22, 185:1, 185:6, 186:3, 186:7, 186:12, 186:17, 186:22, 186:25, 187:2, 187:3, 187:10, 189:9, 189:18, 194:7, 194:11, 195:2, 195:23, 199:4, 199:9, 199:10, 199:16, 199:18, 200:3, 200:6, 200:8, 200:13, 203:2, 209:7, 209:8, 209:9 <b>WASTE</b> <sup>[4]</sup> - 1:10, 1:11, 3:4, 3:4 <b>Waste</b> <sup>[20]</sup> - 6:12, 6:22, 7:4, 8:22, 9:11, 26:21, 26:23, 68:24, 69:3, 72:3, 72:10, 73:9, 136:10, 136:11, 136:13, 138:12, 138:17, 139:9, 139:22, 192:4 <b>wastepaper</b> <sup>[1]</sup> - 197:18 <b>wastes</b> <sup>[3]</sup> - 90:9, 91:5, 138:17 <b>wastewater</b> <sup>[12]</sup> - 87:10, 107:25, 108:14, 109:18,	111:16, 120:1, 123:4, 180:8, 180:9, 180:25, 181:24, 198:12 <b>water</b> <sup>[113]</sup> - 36:6, 40:19, 70:24, 79:19, 92:2, 92:20, 93:2, 102:3, 104:16, 106:23, 107:10, 107:17, 108:6, 108:18, 108:19, 108:21, 108:25, 109:4, 109:6, 109:7, 109:10, 109:12, 109:14, 110:12, 110:16, 110:20, 110:24, 111:9, 111:11, 111:12, 111:15, 111:18, 111:21, 111:23, 112:4, 112:6, 112:9, 112:12, 112:14, 113:6, 113:16, 114:1, 114:11, 114:15, 114:16, 114:17, 114:20, 114:24, 115:1, 115:4, 115:6, 115:8, 115:16, 116:11, 116:13, 116:21, 117:7, 117:20, 118:7, 118:13, 118:15, 119:20, 119:21, 119:22, 122:1, 122:4, 122:9, 122:15, 122:20, 123:22, 125:7, 125:19, 125:24, 127:3, 127:9, 127:13, 127:18, 128:21, 128:25, 129:3, 138:11, 140:7, 140:8, 140:9, 140:15, 144:10, 145:3, 151:13, 152:3, 152:7, 152:23, 153:7, 155:20, 168:7, 169:12, 178:20, 181:12, 187:4, 187:9, 188:16, 194:3, 195:23, 199:14, 200:19, 202:8, 202:9, 202:14, 203:9, 206:10 <b>Water</b> <sup>[6]</sup> - 136:7, 136:19, 152:10, 152:11, 152:15, 154:21 <b>watered</b> <sup>[5]</sup> - 107:17,	108:12, 116:1, 118:3, 128:24 <b>watering</b> <sup>[14]</sup> - 108:10, 113:2, 113:3, 114:19, 114:22, 116:2, 126:3, 127:5, 128:6, 128:17, 145:15, 186:17, 187:8, 199:14 <b>waters</b> <sup>[5]</sup> - 151:12, 189:16, 191:1, 191:17, 203:11 <b>waterway</b> <sup>[1]</sup> - 54:3 <b>ways</b> <sup>[3]</sup> - 91:5, 140:21, 180:19 <b>week</b> <sup>[2]</sup> - 201:5, 201:6 <b>week's</b> <sup>[1]</sup> - 118:14 <b>weeks</b> <sup>[2]</sup> - 67:12, 126:16 <b>west</b> <sup>[6]</sup> - 104:2, 106:23, 118:23, 127:15, 163:4, 194:5 <b>western</b> <sup>[29]</sup> - 107:11, 107:15, 107:16, 107:25, 108:3, 108:8, 109:1, 109:9, 111:8, 111:25, 112:23, 113:10, 114:9, 115:24, 116:6, 124:24, 126:18, 126:22, 128:24, 138:9, 138:10, 138:14, 168:19, 168:20, 169:19, 184:2, 193:25, 202:25, 204:11 <b>wetland</b> <sup>[1]</sup> - 169:16 <b>wetlands</b> <sup>[1]</sup> - 163:1 <b>whatsoever</b> <sup>[2]</sup> - 16:1, 27:23 <b>wherein</b> <sup>[1]</sup> - 76:20 <b>whereof</b> <sup>[1]</sup> - 131:21 <b>whole</b> <sup>[7]</sup> - 15:3, 15:4, 30:16, 46:4, 54:15, 90:19, 92:16 <b>wife</b> <sup>[2]</sup> - 100:6, 134:22 <b>Wildlife</b> <sup>[12]</sup> - 68:6, 70:22, 171:9, 171:22, 173:14, 173:24, 174:6, 174:18, 176:12, 205:13, 205:19, 206:5 <b>wildlife</b> <sup>[2]</sup> - 57:14, 68:17 <b>wind</b> <sup>[1]</sup> - 197:15 <b>WINN</b> <sup>[1]</sup> - 3:17
<b>V</b>	<b>W</b>			
<b>vacuum</b> <sup>[1]</sup> - 91:13 <b>vague</b> <sup>[1]</sup> - 128:14 <b>vain</b> <sup>[2]</sup> - 52:3, 53:3 <b>valid</b> <sup>[3]</sup> - 26:19, 27:22, 29:21 <b>valuable</b> <sup>[1]</sup> - 145:16 <b>values</b> <sup>[2]</sup> - 190:5, 190:10 <b>variety</b> <sup>[1]</sup> - 22:13 <b>various</b> <sup>[1]</sup> - 110:16 <b>VCM</b> <sup>[1]</sup> - 20:22 <b>vegetation</b> <sup>[1]</sup> - 168:22 <b>vegetative</b> <sup>[1]</sup> - 168:25 <b>verdict</b> <sup>[34]</sup> - 5:7, 5:10, 5:17, 5:21, 5:25, 6:3, 6:11, 6:13, 6:21, 6:22, 7:5, 7:6, 7:13, 7:19, 8:16, 8:17, 8:19, 8:25, 9:1, 9:12, 9:14, 9:18, 10:5, 10:8, 10:10, 10:14, 26:17, 72:1, 72:8, 72:13, 72:15, 72:17, 74:7, 74:8 <b>version</b> <sup>[4]</sup> - 178:18, 205:15, 205:17, 211:9 <b>versus</b> <sup>[2]</sup> - 53:11, 180:8 <b>vertical</b> <sup>[4]</sup> - 120:14, 121:6, 123:21, 124:10 <b>viable</b> <sup>[1]</sup> - 147:6 <b>vice</b> <sup>[1]</sup> - 161:4 <b>vice-president</b> <sup>[1]</sup> - 161:4 <b>vicinity</b> <sup>[2]</sup> - 132:22, 194:8 <b>view</b> <sup>[12]</sup> - 96:13, 98:20, 99:5, 100:23, 132:12, 132:22, 144:21, 199:3, 199:17, 199:22, 200:1, 211:16 <b>viewed</b> <sup>[3]</sup> - 101:5, 103:11, 173:9 <b>viewpoint</b> <sup>[1]</sup> - 99:16 <b>VINCE</b> <sup>[1]</sup> - 2:11 <b>Vince</b> <sup>[3]</sup> - 26:13, 29:7, 30:12 <b>violates</b> <sup>[2]</sup> - 65:4,	<b>wait</b> <sup>[2]</sup> - 45:9, 63:23 <b>walk</b> <sup>[3]</sup> - 142:15, 169:7, 173:12 <b>wall</b> <sup>[6]</sup> - 120:14, 121:6, 121:9, 123:21, 124:10, 190:8 <b>wants</b> <sup>[4]</sup> - 28:23, 35:22, 155:11, 161:18 <b>War</b> <sup>[1]</sup> - 90:16 <b>warranty</b> <sup>[1]</sup> - 134:16 <b>washed</b> <sup>[2]</sup> - 176:25, 194:17 <b>washing</b> <sup>[1]</sup> - 177:1 <b>WASHINGTON</b> <sup>[1]</sup> - 3:22 <b>waste</b> <sup>[110]</sup> - 6:8, 6:9, 7:12, 7:17, 7:19, 42:21, 69:9, 79:20,			

<b>WINSTON</b> <sup>[1]</sup> - 4:5 <b>winter</b> <sup>[1]</sup> - 93:25 <b>wish</b> <sup>[1]</sup> - 84:17 <b>wished</b> <sup>[1]</sup> - 151:23 <b>withdraw</b> <sup>[6]</sup> - 54:10, 54:14, 54:15, 65:14, 65:19 <b>withdrawn</b> <sup>[4]</sup> - 33:11, 45:18, 60:25, 66:12 <b>withdraws</b> <sup>[1]</sup> - 65:21 <b>witness</b> <sup>[11]</sup> - 11:3, 23:16, 62:12, 64:8, 129:16, 135:17, 177:14, 182:6, 209:14, 211:3, 211:11 <b>WITNESS</b> <sup>[4]</sup> - 135:20, 207:20, 210:12, 215:17 <b>witnesses</b> <sup>[1]</sup> - 178:5 <b>word</b> <sup>[5]</sup> - 7:25, 53:24, 179:9, 179:15 <b>worded</b> <sup>[2]</sup> - 7:23, 52:7 <b>words</b> <sup>[15]</sup> - 7:14, 85:10, 113:20, 114:7, 118:11, 118:23, 121:3, 122:4, 125:11, 126:3, 139:3, 143:5, 166:23, 206:22, 208:19 <b>works</b> <sup>[1]</sup> - 143:4 <b>World</b> <sup>[1]</sup> - 90:16 <b>worried</b> <sup>[1]</sup> - 104:18 <b>WOTRING</b> <sup>[61]</sup> - 2:4, 2:7, 8:6, 16:2, 16:19, 17:10, 17:14, 19:1, 19:4, 19:11, 20:5, 21:18, 23:1, 23:4, 26:15, 42:3, 55:10, 55:18, 59:20, 60:2, 60:18, 63:7, 65:12, 66:6, 89:24, 90:3, 98:24, 99:8, 105:11, 128:13, 135:15, 177:17, 178:3, 178:7, 179:7, 180:23, 181:7, 181:20, 181:25, 182:5, 182:21, 183:4, 183:11, 185:11, 185:17, 185:22, 187:25, 193:12, 195:12, 196:6, 201:18, 201:24, 205:10, 205:16, 207:18, 209:19, 209:22, 210:6, 213:9, 213:16, 214:5 <b>Wotring</b> <sup>[16]</sup> - 18:13, 26:7, 29:10, 30:23, 177:16, 178:6, 179:23, 183:2, 188:5, 195:11, 195:13, 196:8, 205:18, 206:1, 211:7, 211:15 <b>Wotring's</b> <sup>[2]</sup> - 17:2, 180:2 <b>wound</b> <sup>[2]</sup> - 90:17, 94:7 <b>writing</b> <sup>[5]</sup> - 41:8, 160:15, 173:18, 173:20, 215:8 <b>written</b> <sup>[4]</sup> - 63:20, 119:9, 160:19, 208:19 <b>wrote</b> <sup>[2]</sup> - 83:3, 208:6	213:16, 214:5 <b>Wotring</b> <sup>[16]</sup> - 18:13, 26:7, 29:10, 30:23, 177:16, 178:6, 179:23, 183:2, 188:5, 195:11, 195:13, 196:8, 205:18, 206:1, 211:7, 211:15 <b>Wotring's</b> <sup>[2]</sup> - 17:2, 180:2 <b>wound</b> <sup>[2]</sup> - 90:17, 94:7 <b>writing</b> <sup>[5]</sup> - 41:8, 160:15, 173:18, 173:20, 215:8 <b>written</b> <sup>[4]</sup> - 63:20, 119:9, 160:19, 208:19 <b>wrote</b> <sup>[2]</sup> - 83:3, 208:6	131:11, 137:14, 137:22, 178:8, 179:14, 179:24, 180:14, 181:11, 183:5, 188:6, 189:3, 206:14, 207:18, 208:5, 211:24 <b>ZOCH</b> <sup>[1]</sup> - 74:22 <b>zoch</b> <sup>[1]</sup> - 53:17 <b>zone</b> <sup>[2]</sup> - 149:22 <b>zoom</b> <sup>[4]</sup> - 138:4, 153:21, 160:13, 169:3 <b>zooming</b> <sup>[1]</sup> - 167:24
<b>X</b>		
<b>XYZ</b> <sup>[1]</sup> - 32:8		
<b>Y</b>		
<b>y'all</b> <sup>[2]</sup> - 105:25, 210:22 <b>yard</b> <sup>[3]</sup> - 141:22, 159:15 <b>yards</b> <sup>[3]</sup> - 152:25, 155:18, 155:25 <b>year</b> <sup>[5]</sup> - 17:13, 78:15, 95:8, 105:22, 106:3 <b>years</b> <sup>[9]</sup> - 75:22, 79:9, 81:5, 85:16, 140:20, 141:20, 171:1, 201:14, 206:11 <b>yellow</b> <sup>[1]</sup> - 125:2 <b>yesterday</b> <sup>[5]</sup> - 71:24, 72:7, 101:6, 103:12, 196:17 <b>you-all</b> <sup>[7]</sup> - 19:9, 27:20, 28:15, 42:24, 60:17, 66:3, 210:21 <b>yourself</b> <sup>[2]</sup> - 75:14, 90:13		
<b>Z</b>		
<b>Z-o-c-h</b> <sup>[1]</sup> - 75:5 <b>Zoch</b> <sup>[34]</sup> - 59:25, 60:4, 60:16, 74:19, 75:1, 75:5, 75:6, 75:12, 79:11, 81:22, 84:6, 89:5, 99:16, 100:19, 102:20, 115:13, 119:6, 128:4, 129:19, 131:11, 137:14, 137:22, 178:8, 179:14, 179:24, 180:14, 181:11, 183:5, 188:6, 189:3, 206:14, 207:18, 208:5, 211:24 <b>ZOCH</b> <sup>[1]</sup> - 74:22 <b>zoch</b> <sup>[1]</sup> - 53:17 <b>zone</b> <sup>[2]</sup> - 149:22 <b>zoom</b> <sup>[4]</sup> - 138:4, 153:21, 160:13, 169:3 <b>zooming</b> <sup>[1]</sup> - 167:24		